FILED
NOV 10 1976
MICHAEL RODAK, JR., CLERK

APPENDIX

IN THE
Supreme Court of the United States
OCTOBER TERM, 1976

No. 75-1721

UNITED STATES OF AMERICA,

Petitioner

—v.—

JOSEPH A. CHADWICK, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

PETITION FOR A WRIT OF CERTIORARI FILED MAY 26, 1976
CERTIORARI GRANTED OCTOBER 4, 1976

IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 75-1721

UNITED STATES OF AMERICA,

Petitioner

—v.—

JOSEPH A. CHADWICK, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Crim. No. 73-239-T

THE UNITED STATES OF AMERICA

v.

JOSEPH A. CHADWICK, ET AL.

RELEVANT DOCKET ENTRIES

1973

Nov. 2 Indictment returned.

Nov. 14 ARRAIGNMENT on superseding indictment; Defendant Chadwick appeared with Anthony M. Arena, Counsel; Leary appeared with Raymond F. McColough; Machado (Philip Myman, Counsel did not appear; atty. McColough represented defendant for arraignment) Pleas of NOT GUILTY entered; bail set in the amount of $1,000wos on all Defendants; Government already provided discovery under Rule 16(a) additional motions to be filed on or before December 5, 1973.

Dec. 5 Deft Chadwick's Motion for a hearing, filed c/s.

Deft Chadwick's Motion for Oral Statements of Defendant's filed c/s.

Deft Chadwick's Motion to Suppress, filed c/s.

Deft Chadwick's Motion for Bill of Particulars, filed c/s.

Deft Chadwick's Motion for Statement of Co-Conspirators, filed c/s.

Deft Chadwick's Motion to Dismiss, filed c/s.

1974

Feb. 7 DAVIS, USM. Memorandum on Motion To suppress: ". . . If either party objects to the recommendation of the Magistrate, he should file those objections within 10 days from the date hereof, provided the objections are accompanied by a memorandum.

Apr. 3 Notice of hearing on Dft. Chadwick's motions to dismiss and to suppress for April 11, 1974 at 10 A.M. to Messrs. Cohen and Keating.

May 2 Notice of hearing on motion to suppress and motion to dismiss for May 30, 1974 at 10 A.M.; copy to Messrs. Cohen and Keating.

1975

Jan. 20 Dft. Machado's motion to join in co-defendant's motion to suppress, memorandum in support thereof and opinion and order of this Honorable Court, filed c/s.

Jan. 21 TAURO, D.J. Motion to join in co-defendant's motion to suppress, and opinion and order of this honorable court, "ALLOWED." Copies to Messrs. Nyman Steadman, Keating Arena and Weinberg.

Feb. 7 Govt's motion to vacate order and for reconsideration, filed c/s.

Feb. 10 Government's Notice of Appeal, filed, c/s.

Feb. 25 Order of Court received from the Court of Appeals entered . . . Upon the Government's Motion for Reconsideration, with the district court to report promptly to this court the decision thereon; and it is ordered further prosecution of this appeal be stayed pending the district court action on said motion.

Mar. 6 TAURO, D.J. Hearing on Govt's motion to Vacate Order; Evidence; Arguments; Both sides have one Week to file Further Memos. After this Advisement.

Apr. 10 TAURO, D.J. Supplemental Opinion filed: ". . . The Court reaffirms its opinion and order of January 13, 1975. The motion to vacate that order is hereby denied." Copy to all counsel; Opinion Book, West Publishing Co., Mass. Lawyers Weekly and NCAIR.

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 75-1165

UNITED STATES OF AMERICA

v.

JOSEPH A. CHADWICK, ET AL.

RELEVANT DOCKET ENTRIES

DATE	FILINGS—PROCEEDINGS

1975

May 7 Record on appeal received and filed and case docketed.

May 12 Appearance of Martin G. Weinberg for appellee filed.

May 16 Appearance of Lawrence P. Cohen for appellant filed.

May 19 Statement of issues and designation of contents filed.

June 10 Motion filed. Order (Coffin, Ch. J.) enlarging time for filing brief for appellant and appendix to and including June 26, 1975. Notices mailed.

June 26 Appendix to briefs and brief for appellant filed.

July 8 Motion filed. Order (Coffin, Ch. J.) enlarging time for filing brief for appellee to and including August 8, 1975. Notices mailed.

July 17 Brief for appellee Bridget Ann Leary filed.

July 30 Request for appointment filed. Order (Coffin, Ch. J.) appointing Philip S. Nyman, Esquire, counsel for appellee Gregg John Machado. Order (Coffin, Ch. J.) granting leave to Gregg J. Machado to adopt brief filed on behalf of the other appellees. Notices mailed.

DATE	FILINGS—PROCEEDINGS

Aug. 8 Motion filed. Order (Coffin, Ch. J.) granting leave to appellee to file brief not in excess of 56 pages. Notices mailed. Brief for appellee Chadwick filed.

Aug. 28 Assigned for hearing at the September, 1975, session.

Sept. 9 Appearance of Jeanne Baker filed for appellees. Heard by Coffin, Campbell & Thomsen, JJ.

1976

Mar. 29 Judgment: The order of the District Court is affirmed. Opinion of the Court by Campbell, Circuit Judge. Concurring and dissenting opinion by Thomsen, Senior District Judge. Notices mailed.

Apr. 7 Motion filed. Order (Coffin & Campbel, J.J.) denying rehearing en banc and staying mandate pending certiorari. Notices mailed.

June 2 Notice from Supreme Court of filing petition for certiorari (5/26/76) [No. 75-1721] filed.

Oct. 8 Notice from Supreme Court granting petition for certiorari 10/4/76.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Criminal No. 73-239-T

UNITED STATES OF AMERICA

v.

GREGG JOHN MACHADO
BRIDGET ANN LEARY
JOSEPH A. CHADWICK

SUPERSEDING INDICTMENT

The grand jury charges:

COUNT I

That on or about the 10th day of May, 1973, at Boston, in the District of Massachusetts,

GREGG JOHN MACHADO,
BRIDGET ANN LEARY and
JOSEPH A. CHADWICK

knowingly and intentionally did unlawfully possess with intent to distribute 200 pounds, more or less, of marihuana, a Schedule I Controlled Substance; in violation of Title 21, United States Code § 841(a)(1).

COUNT 2

That from on or about the 8th day of May, 1973, to on or about the 10th day of May, 1973, at Boston, in the District of Massachusetts, and elsewhere,

GREGG JOHN MACHADO,
BRIDGET ANN LEARY, and
JOSEPH A. CHADWICK

did knowingly and intentionally conspire, combine, confederate and agree together and with each other and

with divers other persons whose names are to the Grand Jury unknown, to commit an offense against the United States, that is, to possess with intent to distribute 200 pounds, more or less, of marihuana, a Schedule I Controlled Substance, in violation of Title 21, United States Code, Section 841(a)(1); all in violation of Title 21, United States Code, Section 846.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

Crim. No. 73-239-T

UNITED STATES OF AMERICA

v.

JOSEPH CHADWICK

AMENDED MOTION TO SUPPRESS

Now comes the defendant in the above-entitled matter and moves that this Honorable Court pursuant to the Fourth and Fifth Amendments of the United States Constitution and pursuant to Rule 41 of the Federal Rules of Criminal Procedure suppress the following evidence which the defendant anticipates will be used by the government against him:

1. The approximately 200 pounds of green-brown vegetable matter which the government alleges to be marijuana;
2. The 0.83 net weight of green-brown vegetable matter allegedly marijuana and purportedly seized from defendant Chadwick after his arrest;
3. Any and all containers which the alleged marijuana was possessed in;
4. Any and all testimony by any law enforcement officers regarding observations or statements made of or by the defendant Chadwick after his arrest.

In support of this motion defendant states the following grounds:

1. That the defendant was arrested without probable cause;
2. That any searches incident to this arrest or any statements made as a result of this arrest were the product of an illegal seizure of the defendant's body and violation of his constitutional rights under the

Fourth, Fifth and Sixth Amendments of the United States Constitution;

3. That prior to 9:00 p.m. on May 10, 1973 the government possessed sufficient information to justify it in obtaining a search warrant based on probable cause the trunks on a train arriving on Boston possessed marijuana and in the absence of the obtaining of the search warrants the seizure of these trunks violated the Fourth Amendment of the United States Constitution;

4. That assuming the Government did not have sufficient evidence to warrant the obtaining of a search warrant prior to 9:00 p.m. on May 10, 1973, additional observations made after the arrival of the train in Boston on that date in and around that time warranted the obtaining of a search warrant based on probable cause and the warrantless post-arrest seizure and search of the trunks allegedly possessed or owned by the defendants was in violation of their Fourth Amendment rights under the United States Constitution;

5. The warrantless search of the trunks was not justified by any exception to the requirement of the search warrant; the defendants did not consent to this search, no contraband was in plain view at the time of the search, the search was not incident to an arrest, and there were no exigent circumstances of sufficient proportion to justify the warrantless search.

For all of the above reasons, the defendant moves that any and all use of evidence of any marijuana or any statements he made subsequent to his arrest be suppressed.

By his attorney

MARTIN G. WEINBERG

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

Criminal No. 73-239-T

UNITED STATES OF AMERICA

vs.

BRIDGET A. LEARY

MOTION TO SUPPRESS

Now comes the defendant, Bridget A. Leary and under the provisions of the Fourth and Fifth Amendments of the United States Constitution and Rule 41 of the Federal Rules of Criminal Procedure moves that the following evidence in the possession the government and which the government intends to use against her be suppressed:

1. 85 packages wrapped in blue paper, sealed with masking tape, each package further wrapped in transparent cellophane, which material was contained in one 2'11" x 1'9½" x 1'8½" brown trunk, which packages allegedly contained marihuana in the amount of approximately 200 pounds.

2. 16 packages wrapped in blue paper, sealed with masking tape, each package further wrapped in transparent cellophane, all contained in one red "Tourister" suitcase, which packages allegedly contained marihuana.

3. 8 packages wrapped in blue paper, sealed with masking tape, each package further wrapped in transparent cellophane, all contained in one brown "Tourister" suitcase, which packages allegedly contained marihuana.

4. Any and all conversation, admissions, or testimony made by the said defendant to the government through its agents actively investigating in or participating in the arrest.

In support of this motion, the defendant states:

1. That no probable cause existed upon which a valid arrest could be made.

2. That there was sufficient time within which to obtain a proper search warrant and that the seizure without the search warrant violated the Fourth Amendment of the United States Constitution.

WHEREFORE the defendant moves that the evidence above referred to including any statements made by the said defendant be suppressed.

By her attorney,

/s/ Robert L. Steadman
ROBERT L. STEADMAN
89 State Street
Boston, Massachusetts
742-1535

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Criminal No. 73-239-T

UNITED STATES OF AMERICA

vs.

GREGG MACHADO, ET AL.

MOTION TO JOIN IN CO-DEFENDANT'S MOTION TO SUPPRESS, MEMORANDUM IN SUPPORT OF HIS MOTION TO SUPPRESS, AND OPINION AND ORDER OF THIS HONORABLE COURT

Now comes the defendant, GREGG MACHADO, and moves this Honorable Court grant him leave to join in Joseph Chadwick's (his co-defendant) Motion to Suppress, Memorandum in Support of his Motion to Suppress, and the Opinion and Order of this Honorable Court filed January 13, 1975. (See Criminal No. 73-239-T).

GREGG MACHADO
By his attorney,

/s/ Philip S. Nyman
PHILIP S. NYMAN

[1] UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Criminal No. 73-239 TAURO, D.J.

UNITED STATES OF AMERICA

vs.

JOSEPH A. CHADWICK, ET AL.

APPEARANCES:

Lawrence P. Cohen. Esquire, Assistant United States Attorney, for the Government.

Martin Weinberg, Esquire, Attorney for the Defendant.

[2] THE CLERK: Criminal 73-239-T, United States of America Vs. Joseph A. Chadwick, et al.

[Conference in Lobby.]

MR. WEINBERG: Ny name is Martin Weinberg. For the record, Mr. Chadwick is present in court. And I would request permission for Mr. Lawson, who is a law student in his third year, to sit with me during the course of this hearing. He did some work on it during the summer.

THE COURT: Okay. Nice to have you, Mr. Lawson.

MR. LAWSON: Thank you.

MR. WEINBERG: I also move to sequester the witnesses on the motion for suppression.

THE COURT: Okay.

MR. WEINBERG: On the motion to dismiss, I submitted a brief. I rest on the brief. It just deals with the overt acts alleged in Count 2 of the indictment.

THE COURT: I am familiar with the legal theory that you advance, and I am going to deny the motion to dismiss.

MR. WEINBERG: Your Honor, on the motion to suppress, I have filed a motion to amend my motion to suppress and then an amended motion to [3] suppress.

The amendment basically particularizes what I wish to suppress and the reasons in support of that.

THE COURT: May I have the papers, please? It seems to me that I allowed the motion to amend the motion to suppress. Okay.

MR. WEINBERG: Just to particularize the record, copies of that, as well as our memorandum, were submitted to all other counsel on this case.

Briefly, in the matter of an introduction, I am moving to suppress four different items, your Honor. The first is approximately 200 pounds of a substance which is identified as marijuana, which was found in a trunk seized from a rented vehicle which was connected with Mr. Chadwick.

Second, is a very minute amount of marijuana seized from Mr. Chadwick's body pursuant to his arrest.

Third, is the trunk itself and/or any other containers within which this alleged marijuana was contained.

Fourth, is any statements made by Mr. Chadwick subsequent to his arrest, since I understand it was done prior to his arrest.

[4] The reasons very briefly why I believe these items ought to be suppressed are the following:

Firstly, a lack of probable cause of the arrest of Mr. Chadwick as opposed to the other two defendants.

Secondly, the finding that probable cause that marijuana was contained in this trunk occurred at least two days prior to the arrival of the trunk in Boston.

The trunk was coming on an AMTRAK train from California. The government was in possession of certain knowledge and, therefore, a search warrant should have been obtained.

Thirdly, a search warrant should have been obtained anyway prior to the opening of the trunk, assuming the seizure of the trunk was legitimate.

Those are the principal grounds for the suppression, the motion for the suppression.

If I could call Mr. Christopher as my first witness.

Just prior to his testimony, I think Mr. Cohen and I can stipulate it was approximately 200 pounds identified as marijuana and a minute amount of marijuana.

Rather than introduce them individually, I think that we can stipulate that this [5] is the subject matter of this motion.

MR. COHEN: That's right, your Honor.

RICHARD G. CHRISTOPHER, Sworn

DIRECT EXAMINATION

BY MR. WEINBERG

Q State your name please?

A My name is Richard G. Christopher.

Q What is your present occupation?

A I am presently employed with the Drug Enforcement Administration, stationed at Boston, Massachusetts.

Q What was your occupation on May 10, 1973?

A On that date I was a special agent in the employment of the Bureau of Customs in Boston, Massachusetts, and assigned to the now defunct Office for Drug Abuse Law Enforcement, which is referred to as ODALE.

Q How long had you been a member of the Bureau of Customs at that time?

A Since 1966, July of 1966.

Q In connection with this case, when did you first hear the name of Greg Machado, a co-defendant in the matter styled 73-239-T?

A I heard the name first on or about May 8, 1973.

Q From whom did you hear that name?

A From special agent Paul Lavoie, who was at that time [6] a member of the Bureau of Narcotics and Dangerous Drugs.

THE COURT: Let me have that date.

THE WITNESS: May 8, 1973. And I received the information from special agent Paul Lavoie.

Q Approximately what time on the 8th did you receive this information?

A I can't say. I can only say it was after 9:00 o'clock in the morning, during normal working hours.

Q After 9:00 o'clock in the morning—before 5:00 p.m.?

A I'm pretty sure that would be the case.

Q What did Mr. Lavoie tell you to the best of your recollection?

A Mr. Lavoie stated to me that he had received a phone call from the ODALE office in San Diego, California, from special agent Scott Meadows, who apprised him on the telephone that a trunk, an old brown trunk had been shipped from the San Diego area via AMTRAK to Boston, Massachusetts, on or about May 8, and that the shipper's name was Gregory Machado.

It also listed his address, the address of the shipper, that is, as No. 4 Buttonwood Lane, North Scituate, Massachusetts.

Other conversation was the description of [7] Mr. Machado and so on and the arrival of the trunk.

Q Mr. Lavoie communicated all that information to you and told you the source of that information was an ODALE agent out in San Diego named Agent Meadows, is that correct?

A That is correct, sir.

Q Okay.

Did Agent Lavoie at the time tell you that Agent Meadows had told him that the trunk was leaking talcum powder?

A Yes, sir, he did.

Q And does that leakage have any significance to you as an experienced agent?

A Yes, sir, it does.

Q What is the significance, Agent?

A Well, the leakage doesn't—the presence of talcum powder. Talcum powder and other scented items are commonly used to cover up odors given off by controlled substances, such as marijuana or hashish.

Q Did Agent Lavoie tell you whether or not Agent Meadows had given him the source of Agent Meadows' information?

A I'm sorry. Would you ask that again?

Q Did Mr. Lavoie, during this initial conversation [8] with you back on May 8, tell you whether or not Mr. Meadows told him how Mr. Meadows gathered this information in San Diego?

A I don't recall if he did at that time. I became aware of the means of his information, but I don't know if Mr. Lavoie told me or Mr. Meadows told me.

Q Going at it the other way: Prior to your arrival at South Station on May 10, 1973, would you tell us what investigative steps you took in an attempt to ascertain whether or not this trunk contained a controlled substance?

A Prior to May 10th?

Q Prior to your arrival at South Station and the events which accrued subsequent to that?

A Took no investigative steps to determine that.

Q Well, you did call Agent Meadows, did you not?

A Yes, sir, I did.

Q You did call AMTRAK officials, did you not?

A I didn't, no, sir. I am not aware that anyone from my office did.

Q Well, you know that AMTRAK officials checked the trunk at another stop on the route to Boston?

A I'm sorry. I thought you asked if we checked to determine whether there was marijuana in the trunk.

Q What I'm trying to get generally from you is what [9] steps were taken in this general investigation regarding the trunk itself. Let's stay with any interaction between you and Agent Meadows. Did you call him?

A Yes, sir, I did.

Q How many times did you speak to Agent Meadows?

A On numerous occasions, all on the 8th, 9th and 10th of May in 1973.

Q Did Agent Meadows ever tell you how he gathered the information which Mr. Lavoie communicated to you back on May 8?

A Yes, sir, he did.

Q What did he tell you?

A He obtained his information, his first information in connection with Mr. Machado and the trunk, from an AMTRAK official at either San Diego, California, or Del Mar, California, which are two close towns, close in proximity, that the agent, whose name was not disclosed to me even to this date, at the AM-

TRAK office suspected that the trunk contained marijuana.

He said that based on his experience, that is, the AMTRAK official's experience, that this is the shipper and the method of shipment, plus the leaking talcum powder led the AMTRAK official [10] to suspect that it might contain contraband and probably marijuana, and that information was relayed to the San Diego agent, Scott Meadows, who in turn apprised us of the situation.

At the time that Agent Meadows learned of the shipment it was already en route to Massachusetts on the train.

Q In other words, Agent Meadows was told by AMTRAK after the train left, according to what Agent Meadows told you?

A To the best of my knowledge, that is the way it occurred.

Q Was one of the indicia relied upon by Agent Meadows the weight of the trunk?

A Yes, sir, it was.

Q What was that weight, do you recall?

A 195 pounds.

Q Was another indicia the talcum powder?

A Yes, sir.

Q Was a third indicia the description of the individual who sent the trunk?

A Yes, sir, I believe it was.

Q Just for the record, what was that description as it came to you?

A It was a physical description, that the subject was [11] 5 foot 8, a hundred and some pounds, had a full beard, dark hair, was dressed in dungarees. I believe it was described as dirty attire.

Q Was he with anyone according to what Agent Meadows told you?

A According to his ticketing information, he was with a person. I don't recall that anyone ever saw the person he was with.

Q What was the source of that ticketing information?

A The same individual who reported the trunk.

Q The AMTRAK official?
A Yes, sir.
Q Did you ever speak to that AMTRAK official?
A No, sir, I didn't.
Q Did you ever speak to any AMTRAK officials in California?
A No, sir.
Q Is the only AMTRAK official you ever personally spoke to those in Massachusetts?
A Yes, sir.
Q Did Agent Meadows ever tell you that he, as well as the AMTRAK officials, suspected there was marijuana in that trunk?
A I believe he told me that.
Q You agreed with that suspicion, did you not?
[12] A I agreed with the basis for his suspicion.
Q You felt the suspicion was sufficient to justify an expenditure of men and energy at South Station on May 10, did you not?
A Yes, sir, I did.
Q And did Agent Meadows ever tell you whether or not he ever spoke to any civilian other than the AMTRAK official between May 8 and May 10 regarding the origin of this trunk or any of the circumstances surrounding it?
A I am not aware of it; at least I don't recall it if he told me that.
Q To the best of your recollection, the only source of Agent Meadows' information was AMTRAK officials?
A To the best of my recollection, yes.
Q Have you talked to Agent Meadows since May 10th?
A Yes, sir.
Q Have you discussed the bases of Mr. Meadows' information since May 10th?
A No, the conversation that I had only dealt with the result of our investigation.
Q You have never put the question to Agent Meadows: "Did you have any other information regarding this trunk but the AMTRAK officials," have you?
A I don't believe I have, no, sir.

[13] Q Did you gain knowledge as to the schedule of this train?
A Yes, sir, I did.
Q Who gave you that knowledge?
A I believe it was Officer Robert Walsh of the Penn. Central Police Department.
Q When did you first communicate with him?
A I could not say the date, sir. I don't recall. Between May 8 and May 10th.
Q Was it before May 10th, to the best of your recollection, before the last day?
A I don't know, sir. I know we definitely talked about it on May 10th.
Q Do you have any notes that would refresh your recollection?
A No, sir.
Q When you were talking to Agent Meadows, did you make any notes simultaneous with your conversations with Agent Meadows?
A Yes, sir, I would have.
Q Are those notes available to you today?
A They would only be as they appear in the report. I incorporated my notes into the report.
Q Is there anything in the report that would refresh your recollection regarding the specifics that came [14] out of your conversations with Agent Meadows that you haven't related to us today?
A I'd have to look at the report, sir.
Q Would you do that over lunch?
A At lunchtime? Certainly.
Q Thank you.
Is it fair to say that prior to 7:00 p.m. on May 10th you discovered that this train stopped at various locations across the country? Didn't you?
A Yes, sir.
Q Did Agent Meadows ever tell you about the train schedule?
A Not that I recall.
Q Do you recall where the train stopped?

A I know of two places it definitely stopped: New Haven, Connecticut, and Route 128 in Massachusetts.

Q You don't know whether it stopped at New York?

A I don't know for sure. It probably did, but I can check my report for that aspect of it if I have it noted.

Q Is it fair to say that there are detector dogs in San Diego? Are there not?

MR. COHEN: Objection, your Honor.

THE COURT: If he knows.

MR. COHEN: The relevance of the question. [15] What happens in New Haven—

THE COURT: It may not have any relevance, but let me at least hear it anyway.

THE WITNESS: I'm sorry.

Q You are aware of the presence of detector dogs who perform the same functions, you know, which are resided in San Diego, California, are you not?

A Only in the San Diego area, actually San Ysidro, which is on the border, 30 miles south.

Q And. similarly, they have dogs in New York?

A I believe so.

Q And in New Haven?

A New Haven would be new information to me.

Q Your notes also might refresh your recollection on any information you gained and when you gained it regarding the stops that this train made between California and Boston?

A Yes, sir, they would.

Q Okay. You will look for those during lunch also?

A Yes, sir, I will.

Q Did it ever occur to you to order the AMTRAK officials or to suggest to other agencies or other offices of your agency that at various stops along the train route to have dogs attempt to detect this trunk and whether it contained substances?

[16] A No, it did not occur to me to do that.

Q You never called anyone and requested that, did you?

A I don't recall having done that.

Q And do you know whether or not any other agent in your office did it?

A No, I'm quite certain no one made any attempt to have that done.

Q Were you in charge of this investigation, sir?

A No. I can best say I was a principal in it as opposed to being in charge of it.

Q Agent Lambert was in charge?

A Yes, sir. He was the agent in charge. I was handling the case at the time.

Q Prior to your arrival at South Station, what other agents were involved in the preparation of this case and attempts to discover the source and the result of this trunk?

A Outside—I don't know anyone except Agent Meadows in California. There may have been other ones in California.

Special Agent Paul Lavoie here in Boston.

Special Agent Paul Lambert, who was also the special agent in charge of the Office of Drug Abuse Law Enforcement.

And myself. There were other agents that [17] ultimately worked on it, but I believe we did the primary work on it.

Q And there is one file which would contain reports from all these agents, is there not?

A I'm sorry, sir.

Q Your file contains any reports written on this case by any agents involved in it from the Boston office?

A Yes, sir. It does.

Q And you will check that file to see whether or not, you know, when the schedule was, when you first gained knowledge about that, right, over lunch, right?

A I will check it, yes, sir.

Q Did you ever hear the name Joe Chadwick mentioned on May 8, 1973?

A No. sir. I did not.

Q Did you ever hear it mentioned on May 9th?

A No, sir.

Q Did you ever hear it mentioned until you arrested him on May 10th?

A No, sir.

Q The descriptions which you gained from California—you ended up identifying Mr. Machado as the person fitting the descriptions which Mr. Meadows gave you and to Mr. Lavoie, did you not?

[18] A That's correct, sir.

Q And there was no mention of Mr. Chadwick's name in any of your information which came to you prior to May 10th?

A No, sir.

Q And there was no information about any third person other than Mr. Machado and his traveling companion, which came to you prior to your arrival at South Station?

A No, sir.

Q That is correct, isn't it?

A There was no information—

THE COURT: You're saying there was no information given to you about any third person?

THE WITNESS: That's correct, your Honor. I had not received any such information.

Q By "third person" I mean other than about Mr. Machado and his traveling companion?

A That's correct, yes.

Q What time did you arrive at South Station?

A I believe around 6:50 p.m. on the 10th of May.

Q What time was the train due?

A It was originally scheduled to arrive somewhere around 7:50 p.m.

Q What time did it arrive?

[19] A At 8:50 p.m.

Q Did you observe Mr. Machado get off the train or a person fitting Mr. Machado's description?

A No, sir.

Q Did you observe him at South Station at any time?

A Yes, sir, I did.

Q When did you first observe him?

A Within five or ten minutes after the train arrived at the South Station terminal.

Q Did you observe him make a phone call at any time during that?

A Yes, sir, I did.

Q What time did he make the phone call?

A Between the time of arrival at 8:50 and 9:00 o'clock, I believe.

[20] Q Do you know who he called at that time? At that time did you know who he called?

A No, sir, I did not.

Q You didn't watch him dial numbers?

A No, sir.

Q You didn't overhear any conversation?

A No, sir.

Q In fact prior to the arrest of Mr. Chadwick, you had no idea who he called?

A No, sir, I did not.

Q You saw Mr. Chadwick come to the station, is that right?

A Yes, sir.

Q You don't know of any information as to whether or not—at that time you didn't know whether someone had asked Mr. Chadwick to come or whether Mr. Chadwick came on his own? You have no idea—strike that question.

You have no personal knowledge as to whether or not Mr. Chadwick was called by Mr. Machado prior to the arrest of Mr. Chadwick?

A That's correct. I did not have any such information.

Q Where was Mr. Chadwick when you first saw him?

A When I first saw him, he was walking in the [21] South Station train terminal to a point where Mr. Machado and the co-defendant Brigitte Leary were seated, and subsequently met with them.

Q Do you know whether any agents were outside and saw Mr. Chadwick drive up?

A I don't recall, I don't believe that occurred.

Q It is fair to say there was no surveillance on Mr. Chadwick prior to this arrest?

A That's fair to say, yes, sir.

Q What did you observe him do?
THE COURT: You are talking about Chadwick?
Q Yes.
A I first observed Mr. Chadwick walk up to Mr. Machado and Miss Leary and they had stood together, looking like they were talking to one another, and then Mr.—
THE COURT. Excuse me just one second.

(Discussion off the record)

THE COURT. You saw Mr. Chadwick walk up to Mr. Machado and—
THE WITNESS. And Miss Leary, your Honor, L-e-a-r-y, Brigitte Leary, and they engaged in conversation for a moment. Then Mr. Chadwick left the South Station terminal and went out through [22] the Summer Street-Atlantic Ave. entrance to his car.
Q This is the first time you had any knowledge of the existence of Mr. Chadwick?
A That's correct.
Q And it is fair to say no one was waiting for Mr. Machado when the train arrived?
A I can't say that.
I didn't observe him meet anyone else.
Q And the train was about an hour late?
A Yes, sir, it was.
Q Did you see Mr. Machado claim the trunk?
A Yes, sir, I did.
Q Mr. Chadwick wasn't in the station at that time, was he?
A I don't know, sir.
Q You hadn't seen Mr. Chadwick at the time Mr. Machado got the trunk, did you?
A No, sir, I didn't see him.
Q Mr. Chadwick came after Mr. Machado and Miss Leary and the trunk were all together?
A I can't say when he arrived.
Q The first time you saw Mr. Chadwick was after Mr. Machado and Miss Leary and the trunk were all together?
A That's correct.

[23] THE COURT. Excuse me.
When you saw Mr. Chadwick, Miss Leary and Mr. Machado were talking, and was the trunk also within your view?
THE WITNESS. Yes, sir, it was.
Q At some point you saw Mr. Machado and/or Miss Leary claim the trunk and a red cap delivered it to them, is that right?
A I saw them claim the trunk off the baggage cart, and they placed it next to a no longer used magazine stand, and then subsequent to that a red cap.
Q Did you see them claim the trunk?
A Yes, I did.
Q Did you see them show documentation to whoever was in charge of the luggage at that time?
A I observed them hand a piece of paper to the driver of the baggage car. As a result of that activity, the trunk was unloaded and they moved it over to a position where they sat on it.
Q From the time that they received the trunk from the luggage people—by "they" I mean Machado and Leary—to the time the arrest was made, you never saw the trunk open, did you?
A No, sir, I did not.
[24] Q You never saw any talcum powder even leaking from the trunk during that period of time, did you?
A I don't recall, sir.
THE COURT. You don't recall one way or the other?
THE WITNESS. I do not recall, your Honor; I hesitate to say "yes," because I don't remember.
THE COURT. You don't remember one way or the other?
THE WITNESS. Yes, sir.
Q What time did you make the arrest?
A Approximately 9:00 to 9:10, right in that area, p.m.
Q Approximately how long after you first saw Mr. Chadwick did you make the arrest?
A Within five minutes, I would estimate.

Q There was no conversation prior to the arrest of Mr. Chadwick, was there?
A With whom, sir?
Q Between you and Mr. Chadwick?
A No, sir.
Q And you are not aware of any conversation between Mr. Chadwick and any agent prior to his arrest, [25] are you?
A No, sir, I am not.
THE COURT. I may have missed something.
You made an arrest of Mr. Machado and Leary at 9:10 p.m.
THE WITNESS. And Chadwick.
THE COURT. All three of them at 9:10?
THE WITNESS. Correct, approximately 9:10.
THE COURT. You arrested them all at the same time?
THE WITNESS. Yes, sir.
Q At that time the sole basis for your arrest of Mr. Chadwick was that he was there with Mr. Machado and Miss Leary, is that correct?
A And in possession of the trunk with marijuana.
Q The trunk at some time was taken outside the station, right?
A Yes, sir.
Q And who was it taken outside by?
A A red cap actually physically transported it outside. He was accompanied by Mr. Machado and Miss Leary, who joined Mr. Chadwick at the rental vehicle that Mr. Chadwick had driven to the South Station.
[26] Q You had no evidence he drove the rented vehicle to the South Station, did you, at that time?
A No, I didn't.
Q He was with the car, Mr. Machado, Leary, and the red cap and trunk came up to the car, is that correct?
A Correct.
Q And what happened from that point?
A Miss Leary, I believe, entered the passenger side of the front of the car and Mr. Chadwick and Mr. Machado and the red cap all put the trunk in the—

that is the steamer trunk—into the trunk of the vehicle that was waiting there.
THE COURT. Who did this now?
THE WITNESS. The red cap, whose name escapes me at the moment, assisted by Mr. Machado and Mr. Chadwick loaded the steamer trunk into the trunk of the vehicle.
THE COURT. Okay, let's take a break here.
MR. WEINBERG. May I have one more question?
THE COURT. Yes.
Q This happened at nine o'clock?
A Approximately.
Q Directing your attention to the information you had [27] prior to nine o'clock, have you told us every information, every particle of information you had which would suggest to you that Mr. Chadwick knew what was in the trunk?
In other words, did you have any other information that you felt persuaded you that Mr. Chadwick knew what was in the trunk at the time you arrested him or have you told us everything?
A I believe I have told you everything, yes.
THE COURT. 2:20.

[28] AFTERNOON SESSION

RICHARD G. CHRISTOPHER, Resumed

DIRECT EXAMINATION

BY MR. WEINBERG (Continued)

Q Are you the same Agent Christopher that testified prior to the break?
A Yes, I am.
THE COURT: Are the witnesses all sequestered?
MR. COHEN: That's correct.
Q Just to clear up a few points, you found out about the fact that the train was going to arrive in Boston on May 10th—you found that fact out on May 8th?
A Yes, sir, I did.

Q That fact was found out at least 48 hours in fact before the train did arrive?

A Yes, sir, it had been found out.

Q To clear up one other thing, while in the station, at approximately 9:00 p.m., you and the other agents associated with you had a dog named Duke there, is that correct?

A Yes, sir, it is.

Q And that dog made various passes at the trunk?

A Yes, sir, he did.

Q And that dog reacted or alerted to that trunk, did it [29] not?

A Yes, sir. He did.

MR. WEINBERG: At this point, your Honor, I am not going to contest the reliability of that dog or the fact that that dog is a reliable indicator of the presence of contraband. Mr. Cohen and I have entered into a stipulation. I hope that covers it.

Q Mr. Machado spoke not only to Mr. Chadwick but also to a redcap, did he not?

A Yes, sir, he did.

Q Did you observe that conversation?

A I imagine I did when I saw him speaking to the redcap.

Q And the redcap took the trunk physically and with Mr. Machado brought it out towards the vehicle which Mr. Chadwick was seen standing next to?

A That's correct.

Q After the arrests you searched all three of the defendants, did you not, you and other agents?

A Yes, sir.

Q And you in fact found on Mr. Machado keys to that trunk, did you not?

A Yes, sir.

Q And you also found the receipts and documents which he had proving that was in fact his trunk?

[30] A Yes, sir.

Q Nothing connecting Mr. Chadwick and that trunk in terms of documentation or keys was found pursuant to your search incident to Mr. Chadwick's arrest, was there?

Rephrase the question: Did you find any keys on Mr. Chadwick, any keys which fit the trunk when you arrested him, searched him?

A No, sir. We found keys on Mr. Chadwick, the duplicate of which or a similar type key was found also in Miss Leary's possession. I don't recall what key. I believe it was a safe deposit box key possibly. I don't think it was a trunk key. But there were two keys that were the same.

Q The answer is: No key on Mr. Chadwick fit the trunk, did it?

A No. No key on him fit the trunk.

Q And no document on Mr. Chadwick which in any way indicated ownership or possession in that trunk, is that correct?

A No, sir. There were no documents.

Q Those searches were subsequent, not precedent to the decision to arrest Mr. Chadwick?

A They were after the arrest.

Q When you arrested Mr. Chadwick, he was handcuffed [31] pursuant to the Bureau of Narcotics' procedure at that time?

A That's correct.

Q And he was placed into a vehicle, is that right?

A Yes, sir.

Q Who else was in that vehicle?

A Mr. Machado, myself, and Penn. Central Police Officer Robert Walsh.

Q Mr. Walsh then read Mr. Machado and Mr. Chadwick their rights, did he not?

A Yes, he did.

THE COURT: What happened to Miss Leary?

THE WITNESS: Miss Leary was transported in a separate vehicle, your Honor, because of the fact she was a female. by two other agents.

THE COURT: In this one vehicle you had Machado, Chadwick, yourself and a Penn. Central—

THE WITNESS: A Penn. Central Railroad police officer by the name of Robert Walsh, W-a-l-s-h.

Q You didn't read the Miranda card to Mr. Chadwick or Mr. Machado while in the vehicle en route to the JFK Building from the point of arrest, did you?

A No, I did not.

Q Did you hear Mr. Walsh read them to him?

A Yes, I did.

[32] THE COURT: Mr. Walsh is a Penn. Central policeman?

THE WITNESS: Yes, sir, he is.

Q And did you see Mr. Walsh reading off a card?

A I did.

Q And do you recollect that Mr. Walsh informed Mr. Chadwick and Mr. Machado of all the various rights contained on that card?

A Yes, sir. He did.

Q Did either you or Mr. Walsh ask Mr. Chadwick whether or not he understood those rights?

A Yes, sir.

Q Who asked him?

A I asked him.

Q Did you ask him whether he waived those rights?

A Yes, sir. I did.

Q And what did Mr. Chadwick say?

A He did not waive his rights.

Q And that occurred in the car?

A Yes, sir.

Q That occurred prior to the conversation between you and Mr. Chadwick?

A Yes, it did.

Q So you asked Mr. Chadwick whether he understood and waived his rights and Mr. Walsh read them their [33] rights; is that a fair statement of what happened?

A That's correct.

[34] THE COURT. And he said he did not waive his rights?

THE WITNESS. No, your Honor.

In his answer to his questions, I said Mr. Chadwick did not say "I waive my rights."

I only informed him he could waive them, and he did not indicate to me he would or did waive them.

Q Did he remain silent?

A He acknowledged that he knew he could waive them.

Q Tell me—

THE COURT. You say he did not waive them?

THE WITNESS. No, he did not, your Honor.

THE COURT. He didn't say anything one way or the other, just remained silent? After the rights were given, you asked him if he understood them?

THE WITNESS. Yes.

THE COURT: And you then asked him what?

THE WITNESS. I asked him if he understood he could also waive the rights. And he said: yes, he understood that.

And to my knowledge, I did not ask him if he did waive them. I may have, but I don't [35] recall if I did.

Q Just to clear it up so there is no ambiguity;

After Mr. Walsh read the Miranda rights to Mr. Chadwick, what did you then say to Mr. Chadwick?

A I then went over the Miranda rights sentence by sentence and asked Mr. Chadwick and Mr. Machado together if they understood each facet of the Miranda warning.

Q Did you repeat every word on the card?

A Yes, I did.

Q Or did you ask: "Do you remember Mr. Walsh read you your rights as to counsel, do you understand you have a right to counsel?"

A No, I read every sentence over and asked if he understood them.

Q It is your testimony that in the vehicle both you and Mr. Walsh read the Miranda card to Mr. Chadwick and Mr. Machado?

A That is corrrect, yes.

Q And that all that occurred subsequent to the arrest?

A Yes, sir.

Q Who was sitting where in the car, sir?

A I was seated behind the wheel. Mr. Walsh was seated in the front seat, that's Officer Walsh, on the [36] passenger side.

Mr. Machado was directly behind me; and in the rear seat, on the passenger side in the rear seat was Mr. Chadwick.

Q Who arrested Mr. Chadwick? Who physically placed him under arrest?

A I don't know, sir. There were several officers there. It was sort of a simultaneous situation.

Q It is fair to say when Mr. Chadwick was arrested, someone told him: you are under arrest for possession and with intent to distribute marijuana?

A No, sir.

Q Let me see if I can refresh your recollection:

Directing your attention to page 45 of a hearing held before the magistrate on 30 January, 1974, do you recall being a witness at two other hearings before Magistrate Davis on this matter?

A Yes, I do.

Q And do you recall Mr. Kevin Keating asking you questions on January 30, 1974?

A I don't know if I know Mr. Keating, but if it is here, I assume he must have been the attorney. I don't recognize the name.

MR. WEINBERG. If I could have just a second, your Honor?

[37] Q Showing the witness page 45 of the transcript and see if you refresh your recollection from the second question down to the fourth question.

A I have read that.

Q Do you recall at the point where Mr. Chadwick was arrested informing him of the charges against him?

A I don't know if I stated the specific charges. I might have given a general situation like—I know I said to him quite openly and clearly: you are under arrest. And probably I would have told him it was in connection with being in possession of marijuana, but I wouldn't have given him a citation of a statute.

Q The word "marijuana" was used when you told him he was under arrest and what for?

A I can't recall.

Q To the best of your recollection?

A I simply don't recall.

Q Do you recall being asked:

Q On the street?

A On the street.

Q Did you inform the individuals what they were arrested for, did you?

A Did I?

[38] Q Yes?

A I informed the Defendant Chadwick and the Defendant Michado of the charges, but I don't recall whether it was on the street or inside the car, potential charges, I should say."

Do you recall giving those answers to those questions on January 30, 1974?

A Yes, I do.

Q And you are saying today in September 1974 you have no recollection of the words you used subsequent to saying to Mr. Chadwick "you are under arrest"?

A At this time I do not recall.

Q It is fair to say you may have said "you are under arrest for marijuana"?

A I really don't believe I would have said that because I didn't know what was in the trunk.

Q You didn't know what was in the trunk?

A No, I didn't.

Q You made the arrest for some purpose, did you not?

A I had reason to believe there was a controlled substance in the trunk, but I did not know it was—

Q You can't arrest somebody unless you are arresting him for a violation of some certain statute.

MR. COHEN. I object. He answered the question.

[39] THE COURT. He may have it.

THE WITNESS. I'm sorry, your Honor, I didn't hear it.

Q You arrest somebody because you have reason to believe he violated a certain law of the federal government, right?

A Yes, sir.

Q And the law you felt he violated at that time was the law prohibiting the possession of marijuana?

A That's what I felt, yes, it is true.

Q And it is just your current practice to tell a person when he is arrested what he is arrested for, right?

A Normally, yes.

Q And you have no recollection about the specific time whether or not you followed your current practice?

A On the street I doubt if I said the word "marijuana."

I might have used "controlled substance," because I had good reason to believe there was a controlled substance in there. After arrival at the office and an examination of the substance, it was kind of obvious, and I probably I told him "marijuana".

[40] You might have used the words "controlled substance" on the street?

A Yes, I believe that would be it.

Q Do you believe you did?

A If any word, it would probably have been that.

THE COURT. Are you guessing now? Do you have any memory?

THE WITNESS. No, sir, I do not have a memory on it.

Q Tell us everything that transpired—how long was the ride between South Station and JFK Building, approximately?

A Five minutes, perhaps.

Q After hearing Mr. Walsh read the rights and after you went over the rights with the defendants, tell us everything that transpired, all the conversation between you and either of the defendants from the time you got into the car until the time you arrived at the JFK Building.

MR. COHEN. I object only as to it is limited to this defendant, what was said between this witness and Mr. Machado is not relevant to this hearing.

THE COURT. I think it is, go ahead, as long as it was said in the presence of the defendant.

[41] THE WITNESS. I asked the defendant Mr. Chadwick his name, and he gave it to me.

I asked the defendant Machado his name, and he refused to answer.

I then asked Mr. Chadwick how it came to be that he was—where he was from? And he said, Salem, New Hampshire.

I asked him why he was all the way down here from Salem, New Hampshire? And he said that Mr. Machado had called him.

He asked me how I knew what was in the trunk. And I told him that he had it wrong; I asked the questions.

I asked him how he knew what was in the trunk, and he didn't answer. He said he didn't know what was in the trunk.

I asked him what his phone number was.

He said he didn't have a phone.

Then I asked him how he could get a call from Mr. Machado?

He said that everything that he said I was twisting, and he didn't care to answer any more questions.

Q This is all the conversation in the car, right?

A To the best of my knowledge, recollection, that was [42] all that took place.

Q Was there any conversation in the car after Mr. Chadwick said he wouldn't answer any more questions?

A Not between Mr. Chadwick and myself.

Q Did you hear any conversation between Mr. Chadwick and anyone?

A I don't recall any other conversation.

Q Then you took Mr. Chadwick to the JFK Building and put him through the booking process, is that correct?

A Yes, sir, I did.

Q Was there any further conversation at the JFK Building?

A Yes, sir.

I took routine booking information—name, address, and so on.

At that time Mr. Chadwick stated that he lived, I think it was 100 Riverway in Brookline or near Boston. I don't recall if it was Brookline or not.

I again asked him for his phone number at that address. He said he had no phone.

I asked him how he got the phone call from Mr. Machado. He said he received it on the phone of a friend who lived in the apartment above [43] him at 100 Riverway, that would be the third floor apartment.

And I believe I asked him how he knew to be at that phone at that particular time to receive a call. I don't believe he responded to that question.

I don't think there were any other questions other than booking information asked of him.

Q Were the Miranda rights repeated to him at the JFK Building to the best of your knowledge?

A Yes, they were.

Q Who repeated them?

A I did.

Q Did he sign the BNDD form for waiver of rights, if you know?

A I don't believe he did.

Q Directing your attention back to the South Station at approximate'y 9:00 p.m. on May 10, 1973, you observed the porter and Mr. Machado carrying this trunk to a vehicle next to which Mr. Chadwick was standing, is that right?

A That's correct.

Q And then you saw this trunk placed on to the vehicle, placed in the trunk of the vehicle?

[44] A Yes, sir.

Q Who did the placing, do you recall? Did you specifically observe who placed the trunk?

A Yes, sir, I did.

Q Who did?

A The red cap did the majority of the lifting. Mr. Machado and Mr. Chadwick at the very least guided—I don't know how much weight they assumed—but they did handle the trunk.

Q How many police officers or other agents under your control were present in the area?

A Perhaps six altogether.

Q Were all six of them present at the time the train got in?

A Yes, sir.

Q And all six of them were in the area when the trunk was placed in the train and taken through the baggage procedures and until Mr. Machado took physical possession of it, is that right?

A They were all in the area of South Station, not all inside.

Q Were you in control of this group as a group agent?

A No, sir.

Q Who was in control at that time?

A Special Agent Lambert, Paul Lambert.

[45] Q And with the exception of Mr. Chadwick and the redcap and Miss Leary, no other individuals were seen talking to Mr. Machado from the time you first observed him on the evening of May 10th until the time of the arrest; is that true?

A Are you asking: Seen talking to Mr. Machado?

Q Yes.

A I can't say. There were some other persons seen talking to somebody there, but I don't know which of the three people were involved. I think there was a female present.

Q It's your recollection there was a female who talked to either Mr. Machado or Mr. Chadwick or Miss Leary?

A That's correct. On the street also. I believe that occurred on the street.

Q That occurred while the trunk was being taken to the car?

A Yes.

Q Prior to the time the trunk was taken out of the station, you saw no one else but Miss Leary, Mr. Chadwick and the redcap talking to Mr. Machado?

A That's correct.

THE COURT: I want to make sure I understand this. You say one other person talking to Machado [46] and Leary?

THE WITNESS: No, sir. I was informed that another person, a female, had walked up to one of those three individuals. I did not observe it myse'f. But she was determined not to have been in the problem at that time.

Q She was what? I didn't hear that last.
A We determined that she was not involved in the violation at that time.
Q But the information you received is that she talked to somebody outside the station after the trunk was in the process of being removed from the South Station toward the rented vehicle?
A I don't know what point of time it occurred. It occurred from the time Mr. Chadwick arrived, because this girl talked to one of these three or approached one of the three.
THE COURT: In other words, you don't know whether she was discussing which way the train station or what time it was or what have you?
THE WITNESS: Exactly, your Honor.
THE COURT: You are satisfied that she was in no way connected with the three individuals that are defendants in this case; is that it?
THE WITNESS: That is correct, your Honor.
[47] Q At the time the defendants were arrested, where was the trunk?
A The trunk, sir?
Q Yes.
A In the trunk compartment of the Dodge Polara, a vehicle that Chadwick had driven.
Q Where was Mr. Chadwick when he was arrested?
A At the back of the vehicle.
Q Was the trunk closed?
A No, sir. It was—
MR. COHEN: Excuse me, your Honor. Could we define "trunk"? There is a foot locker trunk and there is a car trunk.
THE COURT: For my sake, why don't you call it the foot locker trunk. The foot locker trunk was where in the Dodge Polara?
THE WITNESS: The foot locker trunk was in the baggage compartment of the passenger vehicle, that is, the back of the vehicle.
THE COURT: You use the word "trunk."
THE WITNESS: All right, sir.

THE COURT: For the record, the word "trunk" alone from here on it will mean that portion of the car which is used for storage.
"Foot locker trunk" will mean the box [48] that these defendants allegedly carried or had carried from the South Station. Go ahead.
Q Where was Mr. Machado when he was arrested?
A I'm sorry, sir.
Q Where was Mr. Machado—
THE COURT: So the trunk of the car was opened?
THE WITNESS: Yes, sir. The trunk of the vehicle was opened.
Q Where was Mr. Machado?
A He was also at the back of the vehicle.
Q Near the trunk of the car?
A Yes, sir.
Q Where was Miss Leary?
A I believe she was seated on the passenger side of the front seat of the vehicle.
Q Did you use any guns when you arrested them?
A You mean did we discharge them?
Q No. Were guns out when you went up to them and made the arrest if you recall?
THE COURT: Did you have a gun in your hand?
THE WITNESS: I didn't have one, no, sir. I was a little bit further back than most. I'm sure there was a gun out.
[49] THE COURT: Did you see a gun displayed?
THE WITNESS: I believe so, your Honor. I don't have much doubt about it.
Q Okay. What happened with Mr. Chadwick physically after the initial words "You're under arrest" occurred?
A He was placed in handcuffs.
Q That was the first thing that was done?
A With all three defendants, yes.
Q How many seconds, if you can estimate, did it take from the time they were told they were under arrest until the time they were handcuffed?
A Less than 30.

Q Then what happened to them? Where did the officers take them?

A I took Mr. Chadwick and Mr. Machado in the back of my government vehicle, and the young lady, Miss Leary, was taken to another government vehicle.

Q So within a matter of two minutes, let's say, all three defendants were inside government vehicles?

A That's correct, sir.

Q And what remained was this Dodge Polara with a foot locker trunk in it, is that correct?

A It was still there, yes.

Q The defendants were frisked, were they not, at the [50] site of the arrest?

A The men were, yes.

Q There were no guns or weapons on them?

A No, sir.

Q Where did the frisk take place?

THE WITNESS: On the street outside the government vehicle. They were turned around, told to lean against the car.

THE COURT: The first thing that happened was you placed them under arrest?

THE WITNESS: Yes, sir.

THE COURT: The second thing that happened was that you handcuffed them?

THE WITNESS: Yes, sir.

THE COURT: The third thing that happened was you frisked them?

THE WITNESS: No, sir. Actually they were frisked between being verbally told of their arrest, put up against the car, hands put behind them and—

THE COURT: Searched and then handcuffed?

THE WITNESS: Put up against the front—or the side of the car.

I can't say which end, but I know it was against the side of the vehicle.

[51] Q So they were taken to the side and put up against the car and frisked?

A To the best of my knowledge, that's the way it occurred.

Q Is it fair to say the trunk ws locked at the time?

A The foot locker trunk was locked.

Q Foot locker trunk was locked. There was no risk to any of the officers at the time the defendants were handcuffed, is that correct, in terms of any guns or weapons being inside of the trunk?

That question was poorly phrased.

It was a bulky trunk, wasn't it?

A The foot locker trunk?

Q Yes, the foot locker trunk.

A It was a large trunk, yes.

Q What were the dimensions?

A Approximately two and a half feet wide and two feet high and three feet long. It was a shipping trunk, commonly used in the old steamer days.

Q Weighed about 200 pounds?

A Yes, sir.

Q Weighed more than any of the three defendants individually weighed?

A I don't recall their weight, sir.

[52] Q And you ascertained that the trunk was in fact locked, right?

A Yes, sir. The foot locker trunk was locked.

Q Did you notice the kinds of locks on the foot locker trunk?

A Yes, sir, I did.

Q What kind?

A One was a padlock—that had a padlock over the regular trunk latch. It's a double locking system there.

Q Did you make these obsevations while the foot locker trunk was in the train station?

A No, I don't think I did.

Q When did you first make that observation if you recall?

A When we removed the trunk from the rental vehicle.

Q When you removed the foot locker trunk?

A The foot locker trunk, yes.

Someone may have reached there and jiggled the lock. I don't recall making the observation until we got back in the building.

Q When the defendants were arrested and placed in the government vehicles, what happened to the Dodge Polara? What was done there by any officers that you observed?

[53] I didn't observe anything in connection with the Dodge.

Q Did you see the foot locker trunk being taken out of the Dodge Polara?

A No, sir.

Q Who took, to the best of your knowledge, the foot locked trunk from the trunk of the Dodge Polara?

A I do not know.

Q The foot locker trunk was still in the Dodge Polara when you drove over with the defendants?

A Yes, sir, it was.

Q Did you ever go back to South Station that night?

A Yes, sir, I did. Or perhaps, early the next morning if not that night.

Q Was the Dodge Polara still there?

A No, sir. I don't believe it was.

Q Was the foot locker trunk there?

A At South Station, sir? No.

Q When did you next see the foot locker trunk after the arrest of the defendants?

A Sometime at around 9:30 p.m. at the ODALE office in the JFK Federal Building.

Q Did you learn who brought it in?

A No, sir. I didn't.

[54] Q Was it opened?

A At the time of its arrival?

No, it wasn't.

Q It was still in the same condition, to the best of your knowledge, that it was in while it was in the trunk of the Dodge Polara?

A Yes, sir, it was.

Q And this is approximately 9:30 or 20 minutes after the arrest of the defendants?

A What was that? I'm sorry.

Q The time that you first saw the trunk, the foot locker trunk, in the ODALE office?

A When we left the arrest scene the Polara vehicle was driven by an agent to the office at the same time the prisoners were taken to the office.

The foot locker trunk was taken into the ODALE office within moments or minutes of the prisoners being transported up there.

Q When was it opened?

A The time it was opened?

Q Yes.

A Between 9:30 at night and 11:00 at night. I don't recall for sure.

Soon after we arrived, I believe.

Q How many agents were in the ODALE office at 9:30, [55] when the trunk arrived, foot locker trunk arrived?

A I believe just myself and Paul Lambert.

Q The two of you were alone?

A You asked "agents." I assume you mean special agents.

Q Yes. Any other government personnel there?

A Not that I recall.

Q How about Mr. Walsh?

A Well, he's not government personnel. He was there.

Q Was he there?

A Yes, he was.

Q Any other railroad personnel?

A Yes, a Lieutenant Curley.

Q Any Boston Police Department officers?

A I don't recall, sir.

Q Where were the defendants at this time?

Were they in a holding cell?

A No. They were in the same office that the agents and the trunk was in.

Q Were they still handcuffed?

A They remained handcuffed for some short period until we started doing their personal histories.

Q Did you do their personal histories after or before the foot locker was opened?

A Some were being done during and one was done before. [56] As we could handle them, we did them. Everything was being done sort of at the same time.

Q When did you seize the keys to the trunk, to the foot locker trunk, from Mr. Machado?

A After the trunk was opened.

Q After the trunk was opened?

A Yes. I believe.

Q Is there a holding cell in the ODALE office?

A No, sir, there is not.

Q Where is the ODALE office?

A It's on the ground floor in the JFK Federal Building, on the end toward the Expressway.

Q That is the same floor that the Bureau of Narcotics and Dangerous Drugs Headquarters was in back in May of '73, wasn't it?

A Yes, sir. It is.

Q Do they have holding cells in the JFK Building?

A Not in the BNDD or the Drug Enforcement Administration.

Q Were there any BNDD officers in the BNDD office at that time if you know?

A There would have been at least one, the radio operator, but I don't know of any other agents.

Q Did you make any attempts to get a search warrant that night prior to opening the foot locker trunk?

A No, sir.

[57] Q And its fair to say that at this time, with the foot locker trunk in the ODALE office, there was no risk that whatever was contained in the foot locker trunk would be removed by the defendants or their associates; is that fair to say?

A At the time we were there together, that is a fair statement.

Q The foot locker trunk was under your control at that time and at all times subsequent to the arrest of these defendants, was it not?

A Yes, sir.

Q And prior to opening the foot locker trunk in the ODALE office, you made no personal perception of any

vegetable substance leaking out or otherwise being observable from this foot locker trunk, is that right?

A I don't know if you will count my observations in connection with the detector dog, but I saw no physical evidence outside of the response from the detector dog.

Q Did you see any talcum powder?

A Yes, I did.

Q You saw talcum powder, but you saw no vegetable matter leaking out?

A No, sir. I saw no vegetable matter.

[58] Q Did you or any other officer search the Dodge Polara with the exception of seizing this trunk, this foot locker trunk, from it?

A Not to my knowledge, sir.

Q And, certainly, there was no thorough search of the Dodge Polara when the foot locker—I take that back.

There was no consent to the taking of the foot locker trunk from any of the defendants, was there?

A No, not that I recall.

Q Just very briefly, just two or three more questions:

The arrest sequence from the time that the foot locker trunk was placed in the trunk of the vehicle until the time that the defendants were handcuffed—is it fair to say it took no more than 60 seconds?

A No.

Q How long did it take? How long was the foot locker trunk in the vehicle until you made the arrest?

A I think we waited for the redcap to get clear of the back of the vehicle. Might have been a minute, 2 minutes, 3 minutes. But not a very long time at all.

Q There were enough officers in the station to arrest [59] the three defendants, in the South Station, weren't there, if you wanted to?

A Yes, there were.

Q And the reason you didn't do it was that you wanted to see what vehicle they placed the trunk in?

A No, sir.

Q Why didn't you arrest them in South Station?

A We wanted to see if any other people were involved.

Q That's the only reason that you didn't arrest them at South Station and seize the foot locker trunk from South Station, is that right?

A That is correct.

Q It was a tactical decision on the part of yourself and Agent Lambert in an attempt to see whether there were any accomplices outside, is that right?

A Yes, sir.

Q And it had nothing to do with your ability to seize the trunk, be it in the station or in the automobile, right?

A Yes. It had nothing to do with that.

MR. WEINBERG: If I can just have one moment, your Honor.

[60] MR. WEINBERG. I have no further questions.

THE COURT. Where was the vehicle parked?

THE WITNESS. The Dodge Polara?

THE COURT. The Dodge Polara.

THE WITNESS. It was parked on Summer Street probably forty-five feet from the intersection with Atlantic Ave. facing South Boston.

I think there is a subway exit right there.

THE COURT. Was it at the curb?

THE WITNESS. Yes, sir, it was at the curb.

THE COURT. Was it at a place at the curb which is set aside for public parking or was there no parking there?

THE WITNESS. The parking restrictions might have been a taxi situation, your Honor, might have been for taxis, only. But I don't recall whether it was posted "no parking" or not.

THE COURT. With relation to the front of the South Station, there used to be a clock on the corner, do you krow what I am talking about?

THE WITNESS. Yes, sir.

THE COURT. So it appears to be a triangle [61] if you are looking at South Station from that front door.

THE WITNESS. Yes, sir.

THE COURT. Where was the car from there, if you were looking at what I call the front door?

THE WITNESS. If you stood at the curbing facing the front door, Atlantic Ave. and Summer Street entrance, the car would be to your left fifteen or twenty feet on Summer Street.

THE COURT. On the righthand side, the station side of the street?

THE WITNESS. On the station side of the street, yes, sir.

THE COURT. Headed in the right direction, right wheels to the curb?

THE WITNESS. Right side of the vehicle to the curb.

CROSS EXAMINATION

BY MR. COHEN

Q Agent Christopher, approximately what time was the first time you actually saw the trunk in South Station?

A Approximately five minutes till nine p.m.

Q Prior to that time, were you convinced in your own mind that the trunk contained marijuana?

[62] A No, sir.

Q And then thereafter the detector dog Duke was employed, is that correct?

A Yes, sir, he was.

Q At that time, sir, what was your understanding with respect to the abilities of Duke? Were his abilities limited solely to marijuana?

A No, sir, they were not.

Q And what was your understanding as to the capabilities of the detector dog Duke?

A He can detect marijuana, cocaine, procaine, and heroin.

Q You first saw the trunk at what time at South Station?

A Approximately five minutes of nine.

Q And the defendants were placed under arrest approximately what time?

A About ten minutes or quarter after nine.

Q And we are talking about a period of twenty minutes between the time you first saw the trunk and when the defendants were placed under arrest?

A Yes, sir.

Q And what was the time span between when Duke first alerted to the foot locker and the time of arrest?

A About ten or twelve minutes.

[63] Q Is it fair to say that that is the first time when Duke alerted that you had reason to believe that that trunk contained some controlled substance?

A Yes, sir.

MR. WEINBERG. Objection, your Honor.

THE COURT. What is the objection?

MR. WEINBERG. The grounds for probable cause are objective circumstances not subjective belief.

THE COURT. Well, it is what he thought, he is asking what he thought.

MR. WEINBERG. I object on the ground of relevance.

THE COURT. He may have it.

Twelve minutes before the arrest, Duke examined, if you will, the trunk, is that it?

THE WITNESS. Approximately that long, yes, sir.

THE COURT. And where did this examination take place?

THE WITNESS. I believe the track is No. 16. It would be at the farthest point in the South Station from Atlantic Ave., at that location there is a large train doorway that leads into the rotunda area from the track platform, and about [64] forty feet inside there, there is a magazine counter which is all enclosed and no longer in use. The defendants Machado and Leary placed the foot locker trunk against the wall on one corner of that magazine stand and sat on it after they picked it out, took it off the baggage car.

From that period—

THE COURT. They carried it off the baggage car?

THE WITNESS. The baggage handler and the man driving it removed it from the baggage car, and put it on the floor. And then they slid it over to the wall. From the point where they unloaded it to the time of arrest was approximately ten or twelve minutes.

THE COURT. All right.

When did Duke examine the box, the trunk?

THE WITNESS. Oh, five minutes after they—after it was unloaded from the train.

THE COURT. This was prior to its being removed from South Station?

THE WITNESS. Yes, sir, prior to being removed.

THE COURT. Tell me how that happened.

THE WITNESS. I sent the dog handler down [65] by the trunk and told him to let the dog go. He had done it twice on his own and didn't let the dog go because he was afraid the defendants would become aware of what was taking place.

On the third occasion, I told him to let the dog go and give him whatever instructions he had to to cause him to institute a search. He did that, and the dog went to the trunk and started scratching on it and giving what is considered a response or alert response to the controlled substance.

THE COURT. That was right in the presence of Mr. Machado and Miss Leary?

THE WITNESS. Yes, it was.

Then I told the dog handler as soon as he gave an indication of an alert to pick up the dog leash and walk him out of the building, which he did. Then he told me about it.

I informed the rest of the officers.

Q Now, sir, you said the arrest occurred at approximately what time?

A About 9:15, as I recall.

I think I said earlier around nine o'clock. At the time I was a little confused.

Q Do you recall the lighting conditions at that time?

[66] A The lighting conditions, sir?

Q Yes.

A Yes, sir.

Q Was it daylight or night at that time?
A It was dark.
Q It was dark?
A Nighttime.
Q When the defendants were placed under arrest, describe the circumstances in that general area.
A At the time of the arrests, there was considerable pedestrian traffic, motor vehicle traffic, and it was dark on the street corner—not well lit for purposes of observation, anyway.
Q And at this time, sir, Special Agent Lambert was in—well, he was your boss so to speak, is that correct?
A Yes, sir, he was.
Q Was there any conversation between you and Special Agent Lambert concerning gaining access to the trunk, the foot locker trunk?
A Yes, sir, there was.
Q Relate that conversation, please: what you said to Agent Lambert and what Agent Lambert said to you.
A Agent Lambert said that we were going to take the [67] trunk into the office to open it because there were too many people on the street. He didn't want to have the defendants and the merchandise out in among the public view and, therefore, we ordered the, whole works to be taken back to the office including the defendants.
Q And to your knowledge another agent drove the Polara with the foot locker trunk back to the office where it was opened, is that correct?
A Yes, sir.
Q And that occurred at approximately what time, to the best of your recollection?
A About 9:15 that we went back to the office.
Q I'm sorry, what time was the trunk opened, the foot locker trunk?
A A little after 9:30, I guess.
MR. COHEN. I have no further questions, your Honor.
MR. WEINBERG. No questions, thank you.

PAUL L. LAVOIE, SWORN

DIRECT EXAMINATION

BY MR. WEINBERG

Q State your name, please?
A My name is Paul L. Lavoie.
Q And what is your present occupation?
[68] A Special Agent for the Drug Enforcement Administration, United States Department of Justice.
Q What was your occupation on May 10, 1973?
A I was a Special Agent for the Bureau of Narcotics and Dangerous Drugs at that time assigned to the office of Drug Abuse Law Enforcement.
Q And that was the same on May 8, right?
A Yes, sir.
Q Do you recall receiving a phone call from Agent Medows in San Diego?
A Yes, sir, I do.
Q And when did you first receive a call from him?
A On May 8, 1973.
Q About what time?
A I would only be guessing, perhaps early afternoon.
Q Early afternoon?
A Yes.
Q Did you take any notes contemporaneously with receiving this phone call?
A I may have.
Q Do you have them with you?
A No, sir.
Q Do you know where they are?
A In all probability, if I did in fact take notes, they were destroyed.
[69] Q How many conversations did you have with Agent Medows?
A At least, one, perhaps, two.
Q Would they both have been on May 8, 1973?
A I believe so.

Q What did Mr. Medows tell you and what did you tell him to the best of your recollection in both of these conversations?

A Agent Medows advised me at that time that there was a suspected shipment of marijuana en route from California to Boston.

He advised me that the suspected shipment was being shipped by the AMTRAK Railway System; that the shipment was contained in an old brown trunk which had been checked by Gregg Machado.

Q What did you do with that information?

A I passed it on to, I believe, my supervisor at the time and other agents in my group.

Q Who was your supervisor?

A Special Agent Paul Lambert.

Q Did you participate in the investigation of the brown trunk between May 8 and May 10, 1973?

A I participated in the investigation in the sense that I believe my role at that time, I tried to identify Mr. Machado.

[70] Q Did you ever call any AMTRAK officials on May 9 or 10 or May 8?

A I may have, I don't recall whether I in fact did or whether another agent did.

Q Did you subsequently sign an affidavit related to this case?

A Yes, sir, I did.

Q I show you this affidavit and ask whether or not that's an accurate reproduction of that affidavit you signed pursuant to a complaint in this case?

MR. COHEN. Your Honor, I wonder if the witness can be shown the affidavit filed with the court because there is no way this witness is going to know verbatim the exact affidavit.

THE COURT. I presume you two can satisfy yourselves whatever Mr. Weinberg is dealing with is a copy.

MR. WEINBERG. Let me show it to him.

MR. COHEN. There was a problem, two affidavits prepared, one was not filed.

This one is burned.

THE COURT. Do you have it here?

MR. COHEN. I agree what he has here is sufficient, he just wants to read one paragraph.

THE COURT. All right.

[71] Q Did you sign an affidavit, Agent, which contained the following information:

> "That on or about May 8, 1973, I received information from Agents of the Office of Drug Abuse and Law Enforcement in San Diego, California, which information was that reliable informants had reported to them that a large quantity of marihuana was being transhipped in a large old brown trunk via AMTRAK train from the West Coast to Boston?

A Again there are plurals in there, and I don't recall whether that is the affidavit or whether it was the second one that was filed.

THE COURT. What paragraph are you reading from?

MR. WEINBERG. The first paragraph, first five lines.

THE COURT. Do you want to look at what I have here?

MR. WEINBERG. Yes, please, your Honor.

MR. COHEN. I will stipulate what was read to the witness was in fact the affidavit filed in court.

THE COURT. All right.

MR. WEINBERG. I have no other questions.

[72] CROSS EXAMINATION

BY MR. COHEN

Q Sir, that affidavit was prepared after the arrest of the defendant, is that correct?

A Yes, sir.

Q In connection with the filing of a complaint before the magistrate?

A Yes, sir.

Q Do you recall which Assistant United States Attorney prepared the affidavit?

A I know initially I provided information verbally and an affidavit was prepared by Mr. John Wilbur, and it was later revised by Assistant United States Attorney Bill Brown.

Q And to your recollection, the one revised affidavit prepared by Mr. Brown was in fact filed in court, is that correct?

A To the best of my knowledge, that's correct.

Q Now, sir, the sentence which was read to you stated that you received or that San Diego had received information from reliable informants—and you signed that affidavit. Was that the fact that there were more than one informant?

A I believe the information given to me was that the information in question was provided by railroad officials, and probably an official, but the plural [73] was used in the affidavit. At this time I don't recall actually whether the source of information was reported to me as single or as plural.

Q What was your understanding of the information given to you by Mr. Medows?

A That information was produced to him by one person.

Q What is your recollection that Mr. Medows told you or Agent Medows told you concerning his source of information?

A I believe that he stated that an official—

Q And in that regard, the affidavit which he talks about "reliable informants" is incorrect, is that correct?

A That would be the case, yes.

Q Now, also, sir, the affidavit did not refer to an AMTRAK official but refers to "reliable informants," was there discussion with Mr. Brown as to the use of this word "informants" as opposed to "AMTRAK official"?

A I believe there may have been.

I was advised by Mr. Medows, Agent Medows, that he would prefer that the source of this information not be disclosed if possible. The word "informant" I believe was a word which I used which Mr. Brown agreed upon

using, also, simply to convey [74] a source of information.

Q And is it fair to say, sir, that the reason the term "informant" was used was because at that time AMTRAK officials had developed a profile for detection of shipments of contraband and that you did not want to reveal that profile.

MR. WEINBERG. If the witness knows?

Q If you know.

A I do not know.

Q You do not know?

Did Agent Medows report that to you?

A Not to my recollection.

He didn't mention the profile as such to me.

Q Did Agent Meadows request that you not disclose the fact it was an AMTRAK official?

A To the best of my recollection, that's the wish he conveyed to me.

MR. COHEN. I have no further questions, your Honor.

I'm sorry, one further question:

You indicated in the affidavit, sir, that you received information that marijuana was in fact being transhipped.

Did you in fact receive hard information [75] that the substance was marijuana?

MR. WEINBERG. Objection.

THE COURT. What's wrong with that question?

MR. WEINBERG. A word of art.

THE COURT. I understand it.

Q Did Agent Medows ever say to you that the substance within the trunk was in fact marijuana?

A No, sir.

Q What to the best of your recollection did he tell you with respect to that trunk?

A That the shipment was suspected to contain marijuana due to the appearance of the trunk.

Q And it was also related to the fact that talcum powder was leaking from it?

A That's correct.

MR. COHEN. I have no further questions.

[76] MR. WEINBERG: Would you ask Mr. Walsh to come in please?

ROBERT WALSH, Sworn

DIRECT EXAMINATION

BY MR. WEINBERG

Q Would you state your name, please?
A Robert Walsh.
Q What is your occupation?
A Police officer, Penn. Central Railroad.
Q What was your occupation in May of 1973?
A Police officer, Penn. Central Railroad.
Q What was your first contact with the events which subseqeuntly led to the arrests of three individuals in and around South Station on May 10th, 1973?
A When I reported for my usual tour at 4:00 p.m., I was advised by the day supervisor that our office had been contacted by Federal authorities in regard to a possible shipment coming from the west coast.
Q When you reported for duty on May 10th?
A On May 10th.
Q What actions did you take between 4:00 and 7:00 p.m. on May 10th?
A Our first action was: We met with the Federal officers in the JFK Building at approximately 6:30.
Q Did you ever call New Haven that day?
A Yes, I did.
[77] Q What did you learn?
A Which call?
Q How many calls did you make to New Haven?
A Our radio desk is at New Haven. We call every two hours.
Q Did you ever instruct New Haven to check that AMTRAK train and find out whether an old brown trunk was on it?
A The AMTRAK train was instructed to be checked by one of our officers at New Haven.

The instructions didn't come from myself; it came from a tour commander.
Q Did you receive the results of that inspection?
A Yes, I did.
Q What time did you receive them?
A I would say approximately 7:30. 6:45-7:30—somewhere in that time zone.
Q What were the results of the inspection?
A That the trunk that we were interested in, bearing a particular luggage tag, was on hand in the baggage car.
Q On these trains the baggage car is a segregated car from the passenger cars, sir?
A Most of the baggage cars are what we call combination cars. They are half passenger car—usually a [78] coach—and the other half is a baggage car, and it's a restricted movement car, which means it has to be either head out on the head end with the baggage section nearest the engineer or on the hind end, with the baggage section trailing.
Q Do you recall or have any knowledge as to what sort of baggage compartment was present on the train which subsequently—
A Train 86 had a combination car on the head end.
Q What sort of separation is there between the baggage and the passengers?
A There is a regular pedestrian access door, the same as the type that is on the end of each car. Usually kept locked. You don't have access though.
Q No access by passengers?
A No.
Q That train which leaves from San Diego makes numerous stops between San Diego and Boston, does it not?
A I presume so, yes.
Q And it makes a stop in New York City?
A Yes, it does.
Q And that stop precedes its stop in New Haven by several hours?
A I would say approximately two hours if it's running [79] on time.

Q Then the stop at New Haven precedes the termination of the train in Boston by three or four hours?

A That is correct.

Q And it's fair to say that that train did stop in New York and in New Haven on May 10th, 1973?

A Yes.

Q And the train's stop in New York was for some period of time?

A They're usually in New York for 10 to 15 minutes, depending on whether they are making a connection with another train.

Q And in New Haven how long was the stop for?

A 10 to 11 minutes in New Haven to change the power from electric to diesel.

Q Okay. You participated in the arrests of the three individuals that evening, did you not?

A Yes.

Q You told them that they were arrested for possessing marijuana with intent to sell?

A I don't think I myself stated what the charge was at the time they were placed under arrest.

Q Who stated it, do you recall?

A I really do not.

Q Do you recall the charge being stated?

[80] A Yes. I'm sure it was stated at the scene, yes.

Q Do you recall the word "marijuana" being used on the scene?

A I cannot say definitely one way or another.

Q See if I can refresh your recollection.

Page 11, Mr. Cohen.

Do you recall testifying before Magistrate Davis on the 9th floor here in this courthouse back in January of 1974?

A Yes, I do.

Q And do you recall being asked certain qpestions pertinent to the matters we are discussing today?

A Yes, I do.

Q Would you please read Page 11 from the second question until the fifth question down, seeing if that refreshes your recollection? Read it to yourself, if you would.

Do you recall hearing either yourself or some officer telling Mr. Chadwick and the other defendants outside the car at the time of their arrest that they were being arrested for marijuana?

A I don't recall whether it was outside the car or immediately after they were placed in the government vehicle.

Q But it was prior to their arrival at the JFK Building?

[81] A Yes.

Q The word "marijuana" was used to the best of your recollection?

A To the best of my recollection.

Q Now, you advised Mr. Chadwick and Mr. Machado in the vehicle of their constitutional rights, right?

A Yes, I did.

Q Tell us from that point everything you recall of the conversation between Mr. Chadwick and Agent Christopher or yourself or Mr. Machado in the vehicle during the ride from South Station to the JFK Building.

A They were placed in the rear seat of the vehicle. Agent Christopher was driving.

I was in the front seat.

It was dark by that time. Agent Christopher turned on the interior light of the vehicle.

I turned around and faced the two gentlemen in the back seat, advised them that I was going to read them their Miranda Warning as provided, took my Miranda Card and read it to them.

When I finished, Agent Christopher asked each one of them point by point if they understood [82] each one of their individual rights, and Agent Christopher asked them their names and addresses.

And Mr. Chadwick stated he had come from Salem, and Agent Christopher said, "You came all the way down from Salem?"

He says, "Yes"—to the effect, "Yes, to pick up a friend."

And then there was a statement made by Mr. Chadwick to Agent Christopher: "How did you know what was in the trunk?"

Agent Christopher said to the effect: We ask the questions. How do you know what is in the trunk? at which time Mr. Chadwick said, "You are twisting around what I'm saying. I don't want to talk to you anymore."

That was the end of the discussion until we got to the Federal Building.

Q When Mr. Christopher asked them whether they understood their rights, did he go over each right specifically?

A Yes, point by point, for the four or five points.

Q Just in conclusion: This train has a schedule, right?

A Yes.

Q And that schedule is printed and available to the public?

[83] A Yes.

MR. WEINBERG: And I have no further questions. Thank you.

MR. COHEN: No questions.

THE COURT: You are excused.

MR. WEINBERG: That concludes the evidence, your Honor.

MR. COHEN: We stipulate that there was no warrant.

MR. WEINBERG: There was no search or arrest warrant.

THE COURT: Do you want to argue now or do you want to give me your briefs and then argue it later or what? You said you wanted some time.

MR. WEINBERG: Yes. I'd like 14 days after the preparation of the transcript for a short addditional memorandum.

My basic memorandum is already in, so I don't think there is any point for a reply brief unless you do.

MR. COHEN: I just think there might be a proml em by the time you—that's fine with me.

THE COURT: Okay.

MR. WEINBERG: Whatever is best for your [84] Honor.

MR. COHEN: I'd like a chance to argue. I think it would be appropriate to have briefs before the Court before you argue it.

THE COURT: Seems to make sense. If you're going to have your memos and if you're going to go to the trouble of having a transcript, seems to me it might be helpful for me to have all that, and then I can be prepared to ask you any questions that I might have at the time of argument.

So let's have your briefs 14 days after you receive the transcript.

Mr. Curry will let Mr. Doherty know when the transcript is given to you, and upon receive of your brief, then we will be alerted to set the matter down for a hearing at some future point.

Now nobody is incarcerated here?

MR. COHEN: No.

THE COURT: What about the 180 days?

MR. COHEN: We are past it. They filed a Rule 50 (b) waiver. Mr. Weinberg's client has. I'm not too sure about the other defendants. You ordered that the other defendants actually file waivers in court. Whether that was filed, I have no knowledge.

[85] I have a letter sent by Mr. Doherty to all counsel stating that they were before Judge Kellam and they waived the Rule 50(b), but this court wanted written waivers. I simply don't know if they filed those or not.

MR. WEINBERG: Mr. Chadwick has executed and is prepared in open court today to waive his speedy trial rights again as of this date.

THE COURT: When was the arraignment?

MR. WEINBERG: November 14.

MR. COHEN: November 14 of 1973.

MR. WEINBERG: There was a whole series of complications. The motion to suppress was heard in front of the Magistrate—things like that.

THE COURT: Oh is this the case that—

THE CLERK: Transferred it to Judge Kellam for trial.

MR. WEINBERG: At that point Miss Leary's counsel, Mr. McColough was ill, and Mr. Barber, who is replacing him, had just been retained that day, and he requested a continuance, which I consented to, and the case was then rescheduled for the hearing today.

THE COURT: Who are the lawyers in this case now?

[86] THE CLERK: Mr. Phillip Nyman of Lowell and Mr. McColough from North Billerica and Mr. Weinberg.

MR. WEINBERG: Both of the counsel at that point waived a speedy trial as of that date. Mr. Doherty asked for execution by formal waivers. I don't know, other than Mr. Chadwick, replied.

THE COURT: Are you going to contact those lawyers? Are you in contact with them at all?

MR. WEINBERG: No, not with either of them, your Honor, with the exception of sending them copies of motions and things.

THE COURT: Why don't you call them and tell them I want to know why they haven't. Based on their response to you, I will decide what else I will do them, if anything, for not having replied. Taking two months to reply.

Okay. We will look for your briefs then.

[Whereupon, the hearing was adjourned.]

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Criminal No. 73-239-T

UNITED STATES OF AMERICA

v.

GREGG JOHN MACHADO
BRIDGET ANN LEARY
JOSEPH A. CHADWICK

NOTICE OF APPEAL

Notice is hereby given that the United States of America, pursuant to Title 18, United States Code § 3731, hereby appeals to the United States Court of Appeals for the First Circuit from the Order of the United States District Court for the District of Massachusetts dated January 13, 1975 granting defendants' Motion to Suppress.

It is hereby certified that the appeal is not taken for purposes of delay and that the evidence suppressed by the Order of the Court is a substantial proof of a fact material in the proceeding.

/s/ James N. Gabriel
JAMES N. GABRIEL
United States Attorney

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Criminal No. 73-239-T

UNITED STATES OF AMERICA

v.

GREGG JOHN MACHADO
BRIDGET ANN LEARY
JOSEPH A. CHADWICK

MOTION TO VACATE ORDER
AND FOR RECONSIDERATION

Now comes the United States of America, by and through its attorneys, and moves this Honorable Court to vacate the Order dated January 13, 1975, granting a Motion to Suppress, and to reconsider the matter for the following reasons:

1. To the extent that this Court ruled that the warrantless opening of the footlocker was improper, this Court stated, in part, that it was clear that had Machado and Leary been arrested in South Station, instead of at the vehicle, a warrant wou'd have been required (Opinion and Order, p. 18). From this premise, this Court concluded that the placing of the footlocker into the vehicle did not make the search any more valid (Opinion and Order, p. 1819). In the government's view, however, the initial premise—i.e., that a warrant would have been required had the arrest occurred in South Station—is erroneous, since the search would have been proper as incidental to the arrest. See *Draper* v. *United States*, 358 U.S. 307 (1959); *Machiz* v. *United States*, 437 F.2d 145, 147 (9th Cir. 1971), certiorari denied, 402 U.S. 974 (1971); *United States* v. *Maynard*, 439 F.2d 1086 (9th Cir. 1971); *United States* v. *Buchanon*, —— F.2d ——, No. 74-1213 (8th Cir. November 13, 1974); *United States* v. *Lugo-Daez*, 412 F.2d 435, 437-439 (8th Cir. 1969), certiorari denied, 397 U.S. 966 (1970). The fact that the actual search took place at the DEA office would not invalidate the "incidental to arrest" exception. *United States* v. *Edwards*, 415 U.S. 800, 802-809 (1974); *Abel* v. *United States*, 362 U.S. 217, 239 (1960); *United States* v. *DeLeo*, 422 F.2d 487, 491-493 (1st Cir. 1970).

2. To the extent that this Court ruled that the contents of two suitcases were suppressible, it should be pointed out that at no time did defendant Chadwick claim any interest in those suitcases. The hearing on Chadwick's Motion to Suppress concentrated on the footlocker, as did Chadwick's Memorandum of Law.[1] Although defendant Leary—who had an interest in the suitcases—did later join defendant Chadwick's Motion to Suppress, defendant Leary relied upon Chadwick's motion and argument, and did not focus on the suitcases.

Had the issue been properly raised at the hearing on the motion to suppress, the government would have presented evidence showing that the opening of the suitcase was affected—not as a search for more incriminating evidence—but simply to inventory the contents of the suitcase according to established DEA procedure. In these circumstances, the inventory was clearly proper. See *California* v. *Cooper*, 386 U.S. 58 (1967); cf. *Harris* v. *United States*, 390 U.S. 234 (1968).

3. To the extent that this Court suppressed defendant Chadwick's statement, in the government's view, this Court improperly concluded that an illegal arrest neces-

[1] Preliminarily to the taking of evidence at the hearing on the Motion to Suppress, counsel for Chadwick stated (Tr. 3):

> Briefly, in the matter of an introduction, I am moving to suppress four different items, your Honor. The first is approximately 200 pounds of a substance which is identified as marijuana, which was found in a trunk seized from a rented vehicle which was connected with Mr. Chadwick.
>
> Second, is a very minute amount of marijuana seized from Mr. Chadwick's body pursuant to his arrest.
>
> Third, is the trunk itself and/or any other containers within which this alleged marijuana was contained.
>
> Fourth, is any statements made by Mr. Chadwick subsequent to his arrest, since I understand it was done prior to his arrest.

sarily requires suppression of a statement which follows that arrest. The admissibility of a statement turns, not on whether or not there was an illegal arrest, but whether the statement was voluntary. *Rogers* v. *United States*, 330 F.2d 535, 542 (5th Cir. 1964), certiorari denied, 379 U.S. 916 (1964). As stated by Chief Judge Caffrey (*United States* v. *Burke*, 215 F. Supp. 508, 511 (D. Mass. 1963)):

> I do not read the recent decision in *Wong Sun* v. *United States*, 371 U.S. 471, 83 S. Ct. 407, 409, 9 L.Ed.2d 441 (1963), or any other opinion of the Supreme Court, as ruling that as a matter of law a person who is illegally arrested is thereby rendered legally incapable of making any voluntary admission or any voluntary surrender of property on his person by reason of the illegal arrest. I believe that whether or not an admission or a surrender of property made after an illegal arrest is voluntary and therefore admissible in evidence, or involuntary and therefore inadmissible, is to be decided on a motion to suppress as a question of fact, (*United States* v. *DeVivo*, 190 F. Supp. 483, 486 (D.D.N.Y. 1961)), in the resolution of which the trier of fact should have in mind the "oppressive circumstances" (*Wong Sun* v. *United States*, supra, at 486, n. 12 of 371 U.S., at 417 of 83 S.Ct.) surrounding the illegal arrest and should require clear and convincing evidence that the admission or surrender is the product of an intervening independent act of the defendant's free will.
>
> I find as a fact that Leo Burke was fully advised of his rights by the Post Office Inspectors and that his conviction with them and the swap of the two $20 bills made by him subsequent to the illegal arrest was made deliberately and voluntarily on the basis of an intervening independent act of his own free will, and that they were not made under the compulsion of the illegal arrest.

In the present case, the evidence clearly showed that Chadwick was fully advised on his *Miranda* rights. There is no evidence that Chadwick experienced any compulsion, or that his statement was other than of his own free will. Therefore, his statement should not be suppressed because of the illegal arrest.

Respectfully submitted,

JAMES N. GABRIEL
United States Attorney

By

LAWRENCE P. COHEN
Assistant U.S. Attorney

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. Misc. 75-8015

UNITED STATES OF AMERICA, APPELLANT,

v.

JOSEPH A. CHADWICK,
BRIDGET A. LEARY,
GREGG J. MACHADO,
DEFENDANTS, APPELLEES.

ORDER OF THE COURT

Entered February 25, 1975

Upon motion of appellant,

While retaining the appellate jurisdiction of this court, leave is granted the district court to entertain and act upon the Government's motion for Reconsideration, with the district court to report promptly to this court the decision thereon; and

It is ordered further prosecution of this appeal be stayed pending the district court action on said motion.

By the Court:

/s/ Dana R. Gallup
Clerk

[1] UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CR 73-239-T TAURO, DJ.

UNITED STATES OF AMERICA

v.

GREG J. MACHADO
BRIDGET A. LEARY
JOSEPH CHADWICK

MOTION FOR RECONSIDERATION OF
MOTION TO SUPPRESS

* * * *

[2] THE COURT: Okay, go ahead, Mr. Cohen.

MR. COHEN: This matter is here on the government's motion for reconsideration. Instead of taking them in the order presented in my motion, I would first like to go to the second point concerning the suitcases, your Honor.

This Court in his opinion considered the suitcases and footlocker on an equal footing.

THE COURT: Because I was led to believe I should.

MR. COHEN: I don't think I led you to believe, your Honor, as I understood Mr. Weinberg, the thrust of his opening remarks at the hearing on the motion to suppress, we all concentrated on the footlocker. I am not saying—I think maybe we were all led into that belief because Mr. Weinberg's client had no association with those suitcases and counsel for the other two defendants did not show up at the hearing. But on that issue, your Honor, I would like to call Agent Christopher for two minutes' testimony concerning those suitcases. I will not be repetitive or anything testified to before.

I did not question him concerning the suitcases themselves because at the time we were first here, I didn't think it was an issue raised by [3] Mr. Weinberg.

THE COURT: Okay.

RICHARD G. CHRISTOPHER, Sworn

DIRECT EXAMINATION

BY MR. COHEN

Q Will you state your full name, sir?
A Richard G. Christopher.
Q And your occupation?
A Special Agent with the Drug Enforcement Agency.
Q And your occupation, sir, in June 1973?
A I was a Special Agent with the Bureau of Customs assigned to the office for drug abuse law enforcement.
Q Now, Agent Christopher, to refresh your recollection, do you recall testifying on September 5, 1974, concerning the arrest of the defendant in the case, the seizure and search of a particular footlocker?
A Yes, sir, I do.
Q Now, sir, as I recall your previous testimony in this case, you indicated that you saw a porter remove the footlocker in question from the AMTRACK train, is that correct, or you saw the porter coming with the footlocker?
A That's correct, sir.
THE COURT: Coming where, coming out of the [4] train station, that's as I recall the testimony.
Q When did you first see the footlocker?
A I saw the footlocker when it was removed from the baggage car of the train on which it arrived, and I watched it from that point to the point where it reached the vehicle being operated by Mr. Chadwick.
Q Now, sir, at that time do you recall seeing any suitcases?
A Yes, sir, I do.
Q And do you recall the description of those suitcases?
A Yes, sir.
Q What were they?

A One was a medium-sized red tourister suitcase; the other was the same type suitcase in a tan or brown color.
Q Where did you first see the red suitcase?
A I believe the red suitcase was being carried by Bridget Leary or a girl whom I knew to be Bridget Leary when she left the train.
Q And the other suitcase, the tan suitcase?
A I became aware of that inside the station when they left the terminal.
Q Now, sir, you also testified at the previous hearing that you requested a dog handler to send the detector dog down toward the footlocker, is that [5] correct?
A That's correct, sir.
Q Did you instruct the dog handler to have the dog check the suitcases?
A No, sir, I didn't.
Q And you had received earlier information from San Diego, had you not, concerning the footlocker?
A Yes, sir.
Q Had you received any information concerning the suitcases?
A No, sir.
Q And after, sir, you placed the defendants under arrest, where were the suitcases as opposed to the footlocker?
A At least one of the suitcases was in the passenger compartment of the motor vehicle as opposed to the trunk. I don't recall whether both were in there or not.
Q And at the time you made that arrest, sir, did you have any reason to believe that the suitcases contained marijuana?
A No, sir.
Q And did you seize the vehicle in which the suitcases were placed?
A Yes, sir.
[6] Q For what purpose?
A Did you say seize?
Q Seize the vehicle?

A Because it was being used to facilitate the transportation of marijuana.

Q And was it seized for the purpose or possible purpose of forfeiture to the United States?

A Yes, sir.

Q Now, sir, then you arrived back at your office approximately nine o'clock, is that correct?

A Yes, sir.

Q At some time were the two suitcases searched?

A Yes, sir.

Q By whom were the suitcases searched?

A By Special Agent Lambert and possibly Trooper Aiello in my presence.

Q And for what reason were those suitcases searched?

A To inventory the contents for accountability purposes, mostly to make sure there was nothing lost or anything of value in there that it could be recorded and accounted for at a later time.

Q Are you familiar, sir, with the regulations concerning the seizure of property, particularly personal effects of a person asserted?

A Yes, sir, I am.

[7] Q What are those regulations?

MR. WEINBERG: Objection.

THE COURT: Do you have the regulations?

Whose regulations?

MR. COHEN: Drug Enforcement Agency.

THE COURT: You mean what is the standard procedure?

You understand I would be interested in it, but we all know their procedures might well be the constitutional standards or otherwise.

MR. COHEN: That's correct.

THE COURT: I don't know it is particularly relevant, but I am more interested: Which suitcase was in the car? You said one suitcase was in the passenger compartment of the car.

THE WITNESS: I said I know at least one was, your Honor. I just don't recall whether both of them were in the passenger compartment.

THE COURT: You know one was?

THE WITNESS: Yes.

THE COURT: Which one?

THE WITNESS: I don't recall at this time.

THE COURT: And were the suitcases locked?

THE WITNESS: Yes, sir, they were.

THE COURT: Where did you get the key?

[8] THE WITNESS: There were no keys, no one had a key, your Honor, none of the three defendants had keys to those suitcases.

THE COURT: So how did you get them opened?

THE WITNESS: They were broken open, sir.

THE COURT: Go ahead.

Q What is the regulation concerning property?

THE COURT: Do you have a copy of the regulation?

MR. COHEN: I have several regulations, your Honor, but I want to know what the agent's understanding of these regulations is concerning day-to-day business of the Drug Enforcement Agency.

THE COURT: I am not so sure that's going to help me too much, what his understanding is.

I would be interested in knowing what the regulations are, and I don't mean any disrespect to the agent, but you certainly can't rely on his understanding of what his responsibilities were.

MR. COHEN: But I think I can rely upon his interpretation of a broad regulation, what to do with personal effects.

THE COURT: Shouldn't you start with the regulations, then?

MR. COHEN: May I have a minute to show it [9] to counsel?

THE COURT: I would be interested in the regulation that talks about what you do with locked suitcases.

MR. COHEN: By agreement of counsel, may I read the relevant portion?

THE COURT: Please.

MR. COHEN: The first is Section 6662.25.

THE COURT: You are going to give me a photostat of that after?

MR. COHEN: Yes, outlining the paragraphs we are dealing with:

> "Collection and handling of other personal property."

Subparagraph A-2 reads as follows:

> "Personal property of non-evidentiary value which is found in a seized automobile will be handled as outlined in 6654.23, Seizure Procedures."

Section 66654.23 of the agent's manual reads in pertinent part as follows:

> "Upon seizing the vehicle, it must be thoroughly searched. A search performed pursuant to civil seizure need not be contemporaneous with an arrest, and no [10] search warrant is necessary. Remove all articles from the vehicle which are not part of the vehicle itself.
>
> "Personal property in the vehicle should be returned to the owner or the person from whom the vehicle was seized, and a receipt obtained. This should be done at the time of seizure or as soon thereafter as possible."

That's the relevant portion, your Honor.

I will send a photocopy of this to the Court.

THE COURT: It says the property should be returned.

MR. COHEN: Upon receipt, the party to whom the property is returned must execute a receipt.

THE COURT: Go ahead.

Q Sir, at the time those suitcases were searched, were you familiar with these regulations?

A Yes, sir, I was.

Q And interpreting and applying them on a day-to-day basis, sir, were all personal searches to determine what was the contents of that personal property?

A Yes, sir.

Q And did you do so on this occasion with respect to [11] the suitcases?

A Yes, sir.

Q And at the time, sir, did you have any reason to believe that marijuana was contained in either suitcase?

A No, sir.

MR. COHEN: I have no further questions, your Honor.

CROSS EXAMINATION

BY MR. WEINBERG

Q You saw both these suitcases prior to their being in the car, is that correct?

A Yes, sir.

Q And once again the situation with the car was the same regarding the suitcases as it was with the footlocker we discussed some months ago, meaning where it was, it was seized at the same time, is that correct?

A That's correct, sir, yes.

Q Just to re-incorporate everything else that's gone on before rather than recross—

THE COURT: You stipulate the operative facts are the same?

MR. COHEN: I will stipulate.

THE COURT: As far as people present and [12] the circumstances as far as exigencies and all the rest of it, is that agreed?

MR. COHEN: Yes.

MR. WEINBERG: One last question.

Q Did you give a receipt to the owners of the suitcases?

A No, sir.

Q What else was in the suitcases but marijuana?

A There were articles of female clothing, undercloth-ing, and I particularly recall a leopard skin type outer garment, two champagne glasses, and then the bricks of marijuana.

I don't know which of the two suitcases contained how much of each. But that was generally the contents, personal effects and marijuana.

Q I will ask you the question I am not supposed to ask you: Why didn't you give the receipts to the possessors of the suitcases?

A For the merchandise that was in the suitcases?

Q Yes, for the leopard skin coat?
A They didn't claim ownership.
I asked, you know, who owns the suitcase so I could determine who had the key, and no one came up with the answer.
Q And you asked that prior to inventorying the suitcases?
A Prior to entering the suitcases.
[13] Q For the purpose of inventory regulations so people who claim ownership know what's in them, is that correct, so you are protected against allegations you have stolen something?
A Please repeat the question.
Q The reason why you go through suitcases is that so someone can't accuse you of stealing things, is that why you go through?
A That must be one aspect of it.
Q Is that the reason why in this case you went through them?
A Yes, certainly.
Q So no one could accuse you of stealing anything, right?
A Yes.
Q Yet they were locked, is that right?
A Yes.
Q And you had to break through them to get into them?
A That's correct.
Q And there was no other way to open them manually except breaking through?
A When I say breaking, they were entered without the key. The locks might have been picked, but they were entered without any assistance from the defendants.
MR. WEINBERG: I have no further questions.
[14] THE COURT: Agent, you talked about your responsibility to preserve the property that's found in the seized vehicle.
THE WITNESS: Yes, sir.
THE COURT: If a vehicle is seized and it has two locked suitcases in it, isn't it sufficient for you to just

inventory the fact that you have got two locked suitcases and keep them secure?
THE WITNESS: It would be sufficient if we knew the contents, your Honor. I have been, so to speak, raised on the belief you ought to see what you are accounting for.
THE COURT: All you are accounting for is two suitcases, locked.
THE WITNESS: Two suitcases that have a basic weight to them other than that what apparently would be a weight of the suitcases and the contents may be perishable, explosive, or may just simply be underclothing or whatever might be the contents.
THE COURT: That wasn't your reason for opening them. You didn't have any suspicion about explosives?
THE WITNESS: Oh, no, none at all. We merely wanted to determine whether there was anything of value in there and whether that merchandise should [15] be handled as though it were a monetary negotiable instrument or placed in a security situation appropriate with the value of the merchandise or the object itself.
THE COURT: When you have a locked suitcase, don't you have the facilities to secure that suitcase and don't you have a room or some facility for locking it up so you don't have to worry about somebody stealing the contents?
THE WITNESS: Yes, sir, but we have qualifications as to what type material goes into high security vaults and materials that don't go into that.
For example, heroin, although it is not related to this, definitely goes into a security vault like a bank vault; and simply personal clothing would go into, perhaps, a caged area that's just merely locked with a padlock.
THE COURT: This is all within the office of the DEA?
THE WITNESS: Yes, sir.
THE COURT: Have you ever had any break-ins?
THE WITNESS: I am sorry, in this instance—
THE COURT: Have you ever had—
THE WITNESS: —this was stored at [16] Appraisers Storage Building.

THE COURT: Why?

THE WITNESS: The Customs Building at 407 Atlantic Ave. on the corner of Northern, Altantic Aves. We didn't operate under auspices with the facilities of the Bureau of Narcotics and Dangerous Drugs except with regulation to drug evidence itself as under the office of the DEA enforcement.

THE COURT: Were these suitcases opened up at a time different from the trunk, the footlocker?

THE WITNESS: A short time, your Honor, within a half hour period, I would say, if it was that long.

THE COURT: Then before or after the footlocker?

THE WITNESS: After the footlocker.

THE COURT: After you opened the footlocker, did you have some reason to think that there might be some additional marijuana?

THE WITNESS: No, sir, your Honor.

As a matter of fact, when we opened the first suitcase and found there was marijuana there, we didn't even suspect marijuana in the second suitcase. That was the surprise in both instances.

THE COURT: Did you know at the time you [17] opened either of the first two suitcases—are you the one that opened them?

THE WITNESS: No.

Agent Lambert, the agent in charge. I was there at the time.

THE COURT: It is hard for me to say this, but subject to there being an objection, did you know at the time you saw Agent Lambert open the suitcase, did you know that marijuana had been found in the trunk?

THE WITNESS: Yes, sir, I did.

MR. COHEN: I would stipulate so did Agent Lambert and Agent Lambert participated in the opening of the footlocker as well.

THE WITNESS: That's correct.

THE COURT: Any other questions?

MR. COHEN: I just want to reiterate one thing:

Q (By Mr. Cohen) This was done at each and every occasion, is that correct?

A Yes, sir.

Q That personal effects are taken along with the arrested person?

A Yes, sir.

[18] RECROSS EXAMINATION

BY MR. WEINBERG

Q There has never been a time in your entire experience where there was some kind of bolted, locked suitcase you kept away for ten minutes where a guy was getting bailed out?

A That we haven't opened it, sir?

Q Yes, that you didn't break through a bolt?

A I can only say that this was unusual that there were no keys available. It would have been opened for the security of the merchandise.

THE COURT: Well, that's not what he asked you.

THE WITNESS: I'm sorry.

THE COURT: That's not what he asked you.

He asked you whether or not given a situation where the suitcase was locked, have you ever had a situation with a locked suitcase before that you didn't break it open, that you merely returned it to the individual?

THE WITNESS: I can't say that I have, your Honor.

I don't know of a time when we have taken a person into custody that was carrying luggage that it was not examined and a list of the contents determined, because we can anticipate such person might [19] get bail but we can't be sure he will. And it would mean we would have to wait an hour to get bail and then have to go through the same routine anyway, and usually it is done as quickly as possible.

THE COURT: Does this apply whether it is locked or unlocked?

THE WITNESS: Yes, sir.

THE COURT: Even if it is locked and he has the key?

THE WITNESS: If he has the key we would unlock it as opposed to breaking in, if that's your question?

THE COURT: Suppose he doesn't want to give it to you, the key?

THE WITNESS: The key?

Well, we would take all of his personal possessions including his belt and shoelaces from him when he is in custody, and among those would be his key, his wallet, papers and so on.

THE COURT: And you feel you are entitled to look through everything just on the basis of making an inventory?

THE WITNESS: No, sir, only on this particular situation because the merchandise being in the car and the people we know are going to go into [20] jail, because they were not able to get bail, and that the agents' and agency's integrity could be subjected to question if we did not know what we had and were able to account for it.

Q (By Mr. Weinberg) Is that the same thing with a briefcase, a guy arrested carrying a briefcase, locked briefcase, you open it up or break into it in order to inventory the papers?

A You are giving me a situation here now which I haven't got to evaluate.

I don't know what the purpose is.

If I have information on a man's briefcase and he has drugs in the briefcase, I will have to guide myself accordingly to the situation as it exists. A man's briefcase is a man't briefcase, and I wouldn't go into his briefcase itself, that's simple.

THE WITNESS: That's all.

REDIRECT EXAMINATION

BY MR. COHEN

Q I think the question is: If he were arrested and taken into custody?

THE COURT: You understand I think this is proper examination because you opened it up by asking him what the regulations, the interpretation of the regulations?

[21] MR. COHEN: That's correct.

THE COURT: Normally I would think this is speculative examination, but since you did set the parameters of this examination, I think it is proper for counsel to go into it.

MR. COHEN: All right.

Q (By Mr. Cohen) If the person with the briefcase were placed under arrest by you for one reason or another, were taken to the DEA or Customs, would you have inventoried his briefcase at the time you arrived?

A Absolutely. I'm sorry, I didn't realize you had an arrest situation. If he was in custody, what he has with him would be inventoried.

Q And you give him a list, let's say he has a briefcase, 180 pages of various documents?

THE COURT: You give him a receipt for each and every document listed?

THE WITNESS: No.

We will give him receipts for miscellaneous papers, just as we would give a receipt for various personal effects, one accounts for clothing.

Q Just a receipt for personal effects?

A Yes.

Q Just like a receipt for a suitcase?

A Well, that would be the same type of receipt.

[22] Q But you would give him a receipt but would you outline every pair of underwear in the suitcase, is that correct?

A No.

Unless the merchandise were returned to them, when we return it, there would be an itemized list of what they received.

Q A guy is carrying a suitcase.

THE COURT: Excuse me, how would you know what to carry on that if you don't itemize it when you open it up?

You know what you returned, but how would you be able to protect yourself because you wouldn't have had a list of the things that were in the suitcase the moment that you opened it up.

THE WITNESS: Normally in this situation, your Honor, if I open a suitcase up and see four bricks of

marijuana, numerous articles of women's clothing, two glasses, it doesn't require—it is something I can remember on the instant and I would make it up.

I wou'd list the things on a piece of paper. Then when the time came to return this, by the time it was returned, it would be typed up. There would be a list in any instance of the [23] merchandise that was returned at the time it is returned.

THE COURT: Okay.

DIRECT EXAMINATION

BY MR. COHEN

Q If it were clothing, how would you list the miscellaneous clothing?

A Personal effects.

Q If you found a diamond ring?

A We would describe the color of the ring, white or colored metal, the setting with a diamond-appearing stone as oppposed to a diamond.

Q And this you would do at the initial inventory?

A Yes.

MR. WEINBERG: No questions.

THE COURT: Okay, thank you very much.

Anything else?

MR. COHEN: No, your Honor, no more evidence.

SUPREME COURT OF THE UNITED STATES

No. 75-1721

UNITED STATES, PETITIONER,

v.

JOSEPH A. CHADWICK, ET AL.

ORDER ALLOWING CERTIORARI. Filed October 4, 1976

The petition herein for a writ of certiorari to the United States Court of Appeals for the First Circuit is granted.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1976 222909 7